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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 402

JOSEPH DOWNEY, MORTON DOWNEY and OLIVER HARPER,
Petitioners,

vs.

SOUTHERN TOWN CONSTRUCTION and MASSACHUSETTS BONDING & INSURANCE COMPANY,

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No.

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,
Petitioners,

vs.

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

The petitioners pray that a writ of certiorari issue to review a judgment of the Court of Appeals of the State of New York, affirming a judgment of the New York Supreme Court in the County of New York, dismissing the complaint herein (R. 268-269).

Opinions Below

The opinion of the Supreme Court (R. 56-64) is reported in 190 Misc. 187. The Appellate Division order of affirmance without opinion (R. 230-231, 237-239) is reported at 274 App. Div. 992. The opinion of the Court of Appeals (R. 240-266) is reported at 299 N. Y. 512.

Jurisdiction

The judgment of the Court of Appeals was entered on July 19, 1949 (R. 268-269). The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3).

Constitutional and Statutory Provisions Involved

The pertinent provisions of the United States Constitution, the New York State Constitution, the Redevelopment Companies Law of New York and the New York City Administrative Code are set forth in the Appendix below (pp. 29-43).

Question Presented

The question presented is whether Negroes may constitutionally be excluded because of their race from consideration as tenants in a housing development which was constructed and is operated under the New York State Redevelopment Companies Law and in the construction and operation of which the State and its subdivisions have participated and are participating to the degree disclosed by this record.

The Manner in Which the Federal Question Is Raised

This action was initiated by the filing of a complaint in the Supreme Court of New York, New York County, by the three petitioners against Stuyvesant Town Corporation and Metropolitan Life Insurance Company (R. 66-75). The petitioners sued in behalf of themselves and those similarly situated (R. 71, 74).

Petitioners alleged that respondents operated a housing project known as Stuyvesant Town, that it was constructed under the Redevelopment Companies Law of New

York with public aid and participation (R. 66-70), that the announced policy of respondents was to exclude Negroes from the housing project (R. 71), and that since petitioners were Negroes no apartments would be rented to them (R. 66, 71-72). They stated that in view of the participation by the State and its agencies in creating the housing project, the rejection of petitioners' applications solely because of their race was a denial of equal protection of the laws in violation of Article I, Section 11 of the New York State Constitution and the Fourteenth Amendment to the United States Constitution (R. 72-73). They prayed that respondents be restrained from withholding apartments in the project from petitioners or any others similarly situated because of their race or color (R. 74).

A motion for an injunction *pendente lite* was denied by Justice Benvenga on July 28, 1947 (R. 54, 56-64). The accompanying opinion dealt with the case on the merits and held that the complaint failed to state a cause of action because it disclosed no violation of the Federal or State Constitutions (R. 61).

Subsequently answer was served and issue joined (R. 75-171). Respondents admitted in their answer that it was their policy to exclude Negroes from Stuyvesant Town (R. 77), but denied that such exclusion was unconstitutional (R. 72-73, 77). Motions and cross-motions for judgment on the pleadings were filed (R. 172-173). They were referred to Justice Benvenga who granted respondents' motion and ordered the complaint dismissed for failure to state a cause of action (R. 174-177). In so disposing of the case, Justice Benvenga relied on his earlier opinion denying the motion for an injunction *pendente lite* (R. 174). As noted above, this opinion dealt solely with the constitutional issue.

On appeal to the Appellate Division of the Supreme Court, First Department, the judgment was affirmed unanimously without opinion on December 20, 1948 (R. 237-239).

On further appeal to the New York Court of Appeals, the judgment was affirmed on July 19, 1949 (R. 268-269). The court divided four to three. The opinion of the court was written by Judge Bromley and concurred in by Judges Conway, Lewis and Dye (R. 241-256, 266). A dissenting opinion was written by Judge Fuld with Chief Judge Loughran and Judge Desmond concurring (R. 256-266). The majority ruled that the admitted discrimination violated neither the Fourteenth Amendment to the Federal Constitution nor the corresponding provision of the State Constitution (R. 256). It is plain that determination of the Federal question was necessary to the result, that the question was determined, and that the judgment below could not have been placed on State grounds alone.[1]

Statement of the Facts

Stuyvesant Town lies in the heart of New York City, facing the East River north of 14th Street (R. 67). It has 8,759 apartments, houses more than 25,000 people, and cost $90,000,000 to build (R. 23, 67). The two main avenues and five cross streets formerly traversing the area are now closed at the project's borders (R. 67-68, 101-102). These avenues and streets are now part of the project as the result of an exchange of property with the City which supplied the project with nearly one-fifth of its area (*infra*, pp. 6-7). The new streets in the project are private and are so marked at the entrances (R. 69, 103).

The area was formerly a slum in which some 10,000 families lived (Answer, Exh. 4, pp. 7, 20).[2] These families

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[1] Simultaneously with the filing of the complaint herein a complaint was filed by Shad Polier against respondents and the Mayor and Board of Estimate of the City of New York. Mr. Polier sued as a taxpayer, alleging the same facts as were alleged in the complaint herein. Throughout the proceedings in the state courts the two cases were consolidated. The Court of Appeals unanimously dismissed the appeal in the Polier action on non-federal grounds (R. 242, 266), and the plaintiff in that action is not seeking review in this Court.

[2] Pursuant to stipulation (R. 225-226) this exhibit to the answer was not printed in its entirety. Copies have been filed with the Clerk of this Court.

were evicted and the area was assembled by exercise of the City's power of condemnation (*infra*, p. 6).

Controls imposed on Stuyvesant Town by statute and by its contract with the City restrict the profits to be derived and limit the rents which may be charged (*infra*, pp. 13, 14), although there is no upper limit on the income of the tenants who may be accepted. The reduced rents which these tenants enjoy are made possible by a tax exemption amounting to $50,000,000 over a 25-year period (*infra*, p. 7) as well as by the other benefits already described.

The benefits which make the project and the reduced rents possible are contributed by all City taxpayers, Negroes as well as whites. However, under respondents' policy, no Negroes have been admitted (*infra*, pp. 7-8). Respondents contend, and petitioners deny, that the Federal and State Constitutions, the applicable statutes and the arrangement with the City permit adoption of this policy.

The State Constitution and Statute.

The New York State Constitution adopted by the people in 1938 contained a separate article on housing which provided among other things for "the clearance, replanning, reconstruction and rehabilitation" of blighted areas (N. Y. Const., Art. XVIII). The Redevelopment Companies Law (L. 1942, Ch. 845, as amended by L. 1943, Ch. 234, and L. 1947, Ch. 840; McKinney's Unconsolidated Laws, Sections 3401-3426), was enacted in pursuance of that objective (Act, Sec. 2). In extensive statutory findings the Legislature recognized the existence "of sub-standard and insanitary conditions" and concluded that "these conditions cannot be remedied by the ordinary operations of private enterprise" (*ibid.*). Accordingly the statute provided for the redevelopment of sub-standard areas by privately owned redevelopment companies acting with "the cooperation of the state and its sub-divisions" and receiving "public assistance" (*ibid.*).

The statute spelled out in some detail the "cooperation" and "assistance" which municipalities were to provide. The land to be rehabilitated was to be condemned by the municipality and then conveyed to the redevelopment company at cost (Act, Sec. 20). Authority was given to grant tax-exemption on the value of the improvements for up to 25 years (Act, Sec. 26). The municipality could close and transfer public streets to the redevelopment company (Act, Sec. 20).

In exchange for these benefits, the Act provided for extensive control of the activities of the redevelopment company including its financing, its construction of housing and the disposition of its property (Act, Secs. 15, 23). It was specifically provided that "the project or projects of any redevelopment company shall be designed and used primarily for housing purposes . . ." (Act, Sec. 14). To insure that the benefits of the public assistance would flow to the tenants of the housing and not to the redevelopment company, profits were limited to 6% and the municipality was required to provide for appropriate limitations on rents (Act, Secs. 8, 15).

The Contract with the City.

In 1943, the City of New York, the Metropolitan Life Insurance Company and Stuyvesant Town Corporation, a wholly owned subsidiary of Metropolitan, entered into a contract for the construction of the housing project to be known as Stuyvesant Town (R. 79-80, 87-125). It provided for the assembling through condemnation of an 18-block tract in the Borough of Manhattan lying between 14th and 20th Streets, 1st Avenue and Avenue C and the East River Drive (R. 72, 96-97, 99). The City was to close and convey to Stuyvesant all public streets within the project in return for conveyance to the City by Metropolitan of strips along the border (R. 101-103). The net gain to respondents by this aspect of the contract was more than 500,000

square feet, or nearly 19% of the 2,600,000 square feet of the site area (R. 68-69). The contract further provided that the City would "plan and replan, zone and rezone, the area . . . in such manner as may be practicable and suitable for the operation of the project" (R. 116). Finally, tax-exemption on the improvements was granted for 25 years (R. 108-110). The tax-exemption comes to above $2,000,000 per year (R. 69), or $50,000,000 over the full 25-year period.

Stuyvesant, under the contract, undertook to clear the area conveyed by the City and to construct the project (R. 100-113). Metropolitan guaranteed the financing of the project and its performance by Stuyvesant (R. 112-113, 121).

The project, which has since been virtually completed, contains 8,759 apartments in 35 buildings (R. 67, 70). Its population of more than 25,000 is therefore larger than all but 25 cities in New York State (16th Census of the U. S., 1940-Population, Vol. I, pp. 710-712).

The Discrimination against Negroes.

The first intimation that Negroes would be excluded from the project was given by Frederick H. Ecker, Chairman of the Board of Metropolitan, prior to the hearing on June 3, 1943, before the New York City Board of Estimate which had power under the statute to approve or disapprove the contract. Mr. Ecker's statement that "Negroes and Whites don't mix" and that therefore Negroes would be excluded (Answer, Exh. 4, p. 26), was referred to by many of the witnesses who appeared at the hearing to oppose approval of the contract because of the threatened discrimination (Answer, Exh. 4, pp. 26, 32, 41, 43, 45, 49, 51, 54, 56, 57, 58, 62). Mr. Ecker, however, appearing as the second witness at the hearing, refrained from either admitting or denying the existence of the policy (R. 158-159; and see Answer, Exh. 4, p. 67).

The contract was approved by a vote of 11 to 5 (R. 160-170). The President of the Council, who cast 3 of the 5 negative votes, plainly indicated his understanding that the Board's action constituted an affirmative approval of discrimination (R. 165-168).

Thereafter, in 1944, the City enacted an amendment to its Administrative Code (Sec. J41-1.2) forbidding racial discrimination in tax-exempt developments; it expressly excepted, however, any project "heretofore agreed upon or contracted for" (App., *infra,* p. 43). As the dissenting judges below noted, this exception "could relate only to Stuyvesant Town", the only project at that time agreed upon (p. 259).

Upon approval of the Stuyvesant Town contract by the Board of Estimate, a taxpayer's action was started to halt the discrimination. Respondents, however, forestalled a test of the issue at that time by pleading that the Directors of Metropolitan had "thus far not adopted any renting policy and that they will have no occasion to do so until the project approaches completion" (position summarized in Opinion of Justice Shientag in *Pratt* v. *LaGuardia,* 182 Misc. 462, 468 (1944), aff'd 268 A. D. 973, leave to appeal denied, 294 N. Y. 842). Because no final renting policy had been announced and the project was not yet under way, respondents won dismissal of the suit on the ground that it was premature. Stuyvesant Town was warned at that time, however, that it "will have to perform its contract . . . in obedience to the fundamental law" and that "if it adopts an illegal renting policy any person thereby aggrieved will have his remedy in the courts" (182 Misc. at 469).

Correspondence with officers of Metropolitan during 1946 and 1947 finally established that they had not at any time departed from their policy of excluding Negroes (R. 72, 39-41, 16-17). After the present action was started, the existence of the policy, as we have already noted, was formally admitted (R. 77).

The three petitioners are Negroes, and, as honorably discharged war veterans,[2a] are fully qualified for acceptance as tenants in Stuyvesant Town (R. 66, 70-71). They have applied for apartments but because of respondents' policy of discrimination, their applications have not been and will not be considered or accepted (R. 70, 71-72).

Specification of Errors

The court below erred:

1. In holding that respondents' discrimination against petitioners because of race, did not violate the Fourteenth Amendment to the United States Constitution.

2. In failing to hold that the benefits of the New York Redevelopment Companies Law must be made available without discrimination because of race.

3. In failing to hold that petitioners' complaint stated a cause of action against respondents.

4. In affirming and failing to reverse the judgment of the New York Supreme Court as affirmed by the Appellate Division.

5. In failing to direct entry of a judgment for petitioners on the pleadings.

Reasons for Granting the Writ

We submit that the court below decided a substantial question regarding the Federal Constitution in a manner not in accord with applicable decisions of this Court. We urge (1) that the question has been decided erroneously by the court below and (2) that the question is substantial and of general importance.

[2a] Respondents are required by 50 U. S. C. App. 1884 to give preference to veterans.

I

The Court of Appeals decided a Federal question in a way not in accord with applicable decisions of this Court.

A. The Court of Appeals correctly noted that "the policy of respondents could not be followed by a governmental body" (R. 252). It held, however, that Stuyvesant Town did not fall within this rule—that the discrimination against petitioners was not "state action" within the meaning of that phrase as used by this Court in construing the Fourteenth Amendment (R. 254-256). We submit that the Court of Appeals viewed the phrase too narrowly.

The ultimate test here is not whether respondents "are representatives of the State in the strict sense in which an agent is the representative of his principal. The test is whether they are to be classified as representatives of the State to such an extent and in such a sense that the great restraints of the Constitution set limits to their action." *Nixon* v. *Condon,* 286 U. S. 73, 89 (1932).

In applying that test, the entire Stuyvesant Town operation must be viewed in the round. It will not do to take each element of state participation and control and determine separately whether that element alone would have required imposition of constitutional restraints. The question is whether, in view of what Judge Fuld called "the total background" (R. 259), respondents may be placed in the same category as the owner of a two-family house.

When a similar test was applied to the company town of Chickasaw in *Marsh* v. *Alabama,* 326 U. S. 501 (1946), this Court held that it could not be treated as a simple private domain. It said, "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it" (326 U. S. at 506). Similarly, the more an owner accepts state

"assistance" and "cooperation" for the creation of property interests which he could not otherwise acquire, the more his rights are circumscribed. For "it would appear beyond question that the power of the State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment. Cf. *Marsh* v. *Alabama,* 326 U. S. 501 (1946)." *Shelley* v. *Kraemer,* 334 U. S. 1, 22 (1948). We believe, with the dissenting judges below, that, "All in all, the resemblance between Stuyvesant Town and the company town of *Marsh* v. *Alabama* (326 U. S. 501, *supra*) is strong, the analogy between this case and that one, clear" (R. 263).

We discuss next the various elements of state participation in the Stuyvesant Town operation which subject it to the constitutional restraint upon discrimination. We submit that, whatever the effect of these elements when viewed separately, when they are taken together the project cannot be held to be "entirely devoid of governmental character." *Kerr* v. *Enoch Pratt Free Library,* 149 F. 2d 212, 219 (C. C. A. 4, 1945), cert. denied, 326 U. S. 721.

B. The housing accommodations from which petitioners were barred because of race were made available through the exercise of exclusive state powers; they were constructed and are now available because of the cooperation of the State and under the supervision of the State; state controls place a ceiling on the rents which may be charged; and the entire project was conceived and executed to serve a purpose declared by the State Legislature to be a public purpose.

1. Judge Fuld correctly noted that "The exercise of a number of governmental functions was absolutely prerequisite" to the existence of Stuyvesant Town (R. 263). The essential feature of this project is that it provides 8700 families with moderate rent housing. Each of these families has the benefit of a reduction in the rent which it would have to pay in unassisted, unregulated housing.

a. The rent reduction was admittedly achieved in large measure by the tax exemption which the statute describes as "public assistance" (Act, Sec. 2). The Chairman of the Board of respondent Metropolitan has recognized that this assistance "is for the benefit of the tenant. By reason of that exemption we are able to rent to a tenant at substantially less than it would be rented if it were not for the benefit of the exemption" (R. 156).

This $50,000,000 subsidy (*supra*, p. 5) is paid for in increased taxes levied upon the rest of the City. The dissenting judges, therefore, properly concluded that "As citizens and residents of the City, Negroes as well as white people have contributed to the development. Those who have paid and will continue to pay should share in the benefits to be derived" (R. 266).

b. Use of the power of eminent domain also contributed to making lower rents possible by reducing the initial capital investment. Respondents acquired the land from the City at cost. Under Section 20 of the statute, awards were made without considering increase in value due to assembly or reconstruction. Obviously, the assembling of so large a tract in the heart of the City gave rise to plottage values which are incalculably large.

In fact, however, the plot could not have been put together at all, and the project could not have been built, without condemnation. Included within the land condemned here were city streets, an existing public school (R. 101-102, 149-150), and property owned by a limited dividend company providing housing for low income families. *Stuyvesant Housing Corp.* v. *Stuyvesant Town Corp.*, 183 Misc. 662 (1944). To achieve this result the statute had to declare the use to which the land was put to be a "superior public use" (Act, Sec. 20). It is this "superior public use" which is now being made available discriminatorily.

c. Streets equalling nearly 19% of the area were turned over to respondents (R. 68-69) and the supervision nor-

mally exercised by the municipality over these streets is now exercised by the corporation (R. 103). Here again the City made an indispensable contribution to the construction of the enterprise. Without this exercise of government powers this moderate rent housing project would not have come into being.

2. Having made grants and concessions to respondents with the aim of ultimately benefiting tenants, the State and City retained certain controls over the project in order to insure the construction and operation of moderate-rent housing. These special government controls, which are inapplicable to other landlords, are designed to insure that the benefits of the public assistance will flow to the public and not to respondents. The court below, in an earlier case involving the constitutionality of the statute, recognized that this "public control" was an essential aspect of the statutory scheme. *Matter of Murray* v. *LaGuardia*, 291 N. Y. 320, 332 (1943).

a. Central to this "public control" is the provision of Section 14 of the Act that "the project or projects of any redevelopment company shall be designed and used primarily for housing purposes. . . ." Section 23 of the Act forbids sale of the project without the consent of the local legislative body. Sections 5 and 15 establish a supervising agency which must consent to the method of incorporation, to the method of financing and to the use to which the project is to be put. Section 15 also requires approval of the City for any modification of the contract.

b. Having insured the creation of the housing, the statute then proceeds to insure that only moderate rents will be charged. Section 8 limits profits to 6% and Section 15 provides for rent regulation and for approval by the city of any rent increase.

c. The statute also gives the City ample power to prevent racial discrimination. Section 15 of the Act provides that the contract may include not only regulations upon

rents but also such provisions as may be "necessary or desirable" for the "operation and supervision of the project". Under this broad grant, the City had ample power to include in the contract a ban on the discrimination of which it was warned (*supra*, pp. 7-8).

d. All the statutory controls are reaffirmed in the contract (R. 87-89). The contract originally provided that the average rental would not exceed fourteen dollars per room per month (R. 111). The City subsequently agreed to raise this maximum to seventeen dollars (R. 127-132).

3. Finally, the creation of benefits in the form of 8700 moderate rent apartments in the heart of New York City by the tax exemption and other benefits, was an intended objective of the statute and contract. It was this objective which prompted the State and City to enter into "cooperation" with private interests and which shaped the nature and extent of that cooperation.

In Section 2 of the Act, the New York Legislature found that there was a need for "a sufficient supply of adequate, safe and sanitary dwelling accommodations." It declared that the "provision of adequate . . . housing" is a "public use and purpose" and extended "public assistance" and "the cooperation of the State" to agencies, instrumentalities and corporations like Stuyvesant Town created for the purpose of attaining "the ends herein recited"; that is, the "provision of adequate . . . housing".

In Section 4(13) of the Act, the Legislature directed that a redevelopment company's certificate of incorporation contain "a declaration that the redevelopment company has been organized to serve a *public purpose* and . . . that all real and personal property acquired by it and all structures erected by it, *shall be deemed to be acquired or created for the promotion of the purposes of this Act.*" (Italics supplied.) The public purpose was not only slum clearance but the moderate rent housing made possible by the condemnation, tax exemption, and cession of streets.

The "public purpose" could have been achieved by the State directly. Under appropriate constitutional and statutory provisions it could have erected the Stuyvesant Town development in its own name. It chose instead to use its exclusive powers to make possible its erection through the "cooperation" of the State and private enterprise. It is our position that the State could not, by making that choice, diminish the applicability of the constitutional prohibition of discrimination. "No one claims or even suggests," said Judge Fuld, "that the City adopted an alternative strategem to effect discrimination, but it may not be gainsaid that the development plan, the contract and the local law brought about precisely the same situation as if the City had zoned or leased a 'white' development. We draw distinctions too fine and too subtle when we say that the several cases are different or that they merit different consideration" (R. 265).

C. We submit that on these facts the decision below is in conflict with the principles laid down in *Buchanan* v. *Warley*, 245 U. S. 60 (1917); *Shelley* v. *Kraemer*, 334 U. S. 1 (1948); *Smith* v. *Allwright*, 321 U. S. 649 (1944); *Marsh* v. *Alabama*, 326 U. S. 501 (1946); *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192 (1944); *Nixon* v. *Condon*, 286 U. S. 73 (1932); *Rice* v. *Elmore*, 165 F. 2d 387 (C. C. A. 4, 1947), cert. denied, 333 U. S. 876; *Kerr* v. *Enoch Pratt Free Library*, 149 F. 2d 212 (C. C. A. 4, 1945), cert. denied, 326 U. S. 721, and other cases.

1. The discrimination here satisfied the "but for" test used by this Court in the *Shelley* case, *supra* (334 U. S. at 19). This is not a case where the State has "merely sustained from action" (*ibid*). Rather, it has made available "the full coercive power of government" (*ibid*). This Court recognized in that case that the Fourteenth Amendment "erects no shield against merely private conduct" (*id.* at 13). It went on to say, in words equally applicable here, "But here there was more" (*ibid*). Stuyvesant Town wears "the full panoply of state power" (*id.* at 19)

and "bears the clear and unmistakable imprimatur of the State" (*id.* at 20).

In entering into the contract with the City under the Redevelopment Companies Law, Stuyvesant Town became obligated to build and lease moderate rent housing. It therefore acquired "character as a state agency from the duties imposed upon it by state statutes." *Smith* v. *Allwright, supra,* 321 U. S. at 663. Operating and governing a community with a population of more than 25,000, it is "clothed with power not unlike that of a legislature which is subject to constitutional limitations." *Steele* case, *supra,* 323 U. S. at 199. It is equally clear that the State exercised "so great a degree of control over the activities and existence . . . [of Stuyvesant Town] . . . that it would be unrealistic to speak of it as a corporation entirely devoid of governmental character". *Kerr* case, *supra,* 149 F. 2d at 219.

2. An essential principle of these cases is that discrimination may fall within the constitutional ban even if it originates with private individuals. Thus this Court said in the *Shelley* case (334 U. S. at 20): "Nor is the Amendment ineffective simply because the particular pattern of discrimination, which the State has enforced, was defined initially by the terms of a private agreement." In *Smith* v. *Allwright, supra* (321 U. S. at 663), this Court held that a private organization, a state Democratic Party, was "an agency of the state *in so far as it determines* the participants in a primary election" (italics supplied). So here, Stuyvesant Town is a state agency "in so far as" it determines the beneficiaries of the exercise of state powers.

3. The private parties whose discrimination was curbed in the decisions cited above were all subjected to restraints not generally applicable to private individuals. That fact was considered by the Circuit Court of Appeals for the Fourth Circuit in the *Kerr* case, *supra,* which held that

the private trustees of a privately-founded, state-supported library were prohibited from engaging in racial discrimination. The court said that the original donor of the library "could have formed a private corporation . . . with power both to own the property and to manage the business of the Library independent of the state." Instead, the donor chose "to seek the aid of the state" and hence his representatives, the trustees, are subject to constitutional limitations (149 F. 2d at 216-217).

Having accepted similar aid here, it makes no difference that respondents retained title to Stuyvesant Town. "Ownership does not mean absolute dominion." *Marsh* v. *Alabama, supra,* 326 U. S. at 506.

4. Respondents themselves recognize that they are distributing State-created benefits (*supra,* p. 12). As the dissenting judges noted, they are the "chosen instrument for this public purpose" (R. 266). They are "repositories of official power . . . governmental instruments. . . . What they do in that relation, they must do in submission to the mandates of equality and liberty that bind officials everywhere." *Nixon* v. *Condon, supra,* 286 U. S. at 88.

That mandate is directed to respondents by the Constitution itself; it operates directly and without regard to whether the statute and contract under which respondents operate specifically command, permit, or forbid discrimination. "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." *Yick Wo* v. *Hopkins,* 118 U. S. 356, 373-374 (1886).

The question in the present case is whether the state support given to Stuyvesant Town and the state supervision of its activities impose higher responsibilities than those governing unsubsidized and unregulated landlords.

In determining that question, it is immaterial that Stuyvesant Town is privately owned, as the cases above show. It is irrelevant even that it is a corporation; the case would be no different if the State had lent its support to private individuals such as those involved in the *Shelley* case, *supra*. Above all, it is irrelevant that the State has acted through a private agency.

What is decisive, we submit, is that the State has acted—that it has provided for housing on a large scale by the use of state powers and under state control. Because of this, respondents' discrimination is not "merely private conduct", free of the restraints of the Fourteenth Amendment. As in the *Shelley* case *supra*, "here there was more" (334 U. S. at 13).

For the reasons noted above, the decision below is not in accord with the applicable decisions of this Court. The Court of Appeals viewed those cases far too narrowly in concluding that "State action . . . has hitherto been found only in cases where the State has consciously exerted its power in aid of discrimination or where private individuals have acted in a governmental capacity so recognized by the State" (R. 255). See particularly the *Steele* and *Kerr* cases, *supra*, and the several cases in which State and lower Federal courts have forbidden discrimination in privately operated, state constructed facilities. *Lawrence* v. *Hancock*, 76 F. Supp. 1004 (1948); *Kern* v. *City Commissioners of Newton*, 151 Kan. 565 (1940); *Culver* v. *City of Warren* (Ohio App.), 83 N. E. 2d 82 (1948).

D. In any case, we believe that this case comes even within the formula of the court below since the City did "consciously" aid the discrimination.

1. As noted above (pp. 7-8), the discrimination practiced here was proclaimed in advance at a time when it could have been prevented. The court below itself recognized this: "Certainly the general impression was created—which Metropolitan did nothing to dispel—that Stuyvesant Town would not rent to Negroes" (R. 249).

When the contract was before the Board of Estimate, it was told by a succession of witnesses that respondents intended to exclude Negroes (*supra*, p. 7). The Board member who cast three of the five negative votes made it clear that he viewed the Board's action as affirmative approval of discrimination (R. 165-168). Furthermore, when the City subsequently did prohibit discrimination in tax-aided projects, it created an exception applicable only to Stuyvesant Town (*supra*, p. 8).

This Court established the unconstitutionality of racial zoning more than thirty years ago. *Buchanan* v. *Warley*, *supra*. In accordance with that principle it would strike down the present contract if it expressly required exclusion of Negroes. It can make no difference that the understanding that Negroes would be barred was implicit rather than express.

Certainly, the Stuyvesant Town area is now effectively "zoned" against Negroes. Further redevelopment projects may just as effectively zone minority groups into or out of adjacent areas. The result will differ from the ordinary casual grouping of neighborhoods because, and to just the extent that, government support and control give permanence and stability to the project patterns.

2. When the City was informed that discrimination was to be practiced in the project for which it was contracting, it should have taken appropriate steps to forbid it. The obligation of a state agency to extend equal protection of the laws is not exclusively negative. It must not only refrain from discrimination itself but must also see to it that its agents, those who dispense its benefits, and those who act under its control, also adhere to constitutional principles. *Cf. Kern* v. *City Commissioners of Newton*, 151 Kan. 565 (1940). The City had ample power to do so under Section 15 of the statute (*supra*, pp. 13-14).

We submit that since the City could, and under the Constitution should, have prohibited racial discrimination by respondents, the constitutional restraints have a direct thrust which requires that the discrimination be restrained.

II

The decision below raises a Federal question of substance and importance.

Even if the existing decisions of this Court do not directly compel a decision in petitioners' favor, they certainly do not affirmatively support respondents' defense of discrimination. Thus, at the very least, a Federal question of substance is presented, not heretofore decided by this Court, within the meaning of Rule 38(5)(a).

A. The opening sentences of the prevailing and dissenting opinions below disclose the substantial nature of the question here presented. The majority opinion says: "This appeal . . . raises the important question of whether a corporation organized under the Redevelopment Companies Law has the privilege, admittedly possessed by an ordinary private landlord, to exclude Negroes from consideration as tenants" (R. 241). The dissenting opinion opens on a similar note: "Undenied and undeniable is the fundamental proposition that 'Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality' . . . The average citizen, aware of that truth but unschooled in legal niceties, will, I venture, find the decision which the court now makes extemely perplexing" (R. 256-257).

The two opinions reveal a sharp division on the interpretation of the line of recent decisions of this Court on the meaning of "state action." Plainly, even the four prevailing judges considered that the constitutional issue was substantial.[3]

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[3] The special problems raised by the discrimination at Stuyvesant Town were the subject of comment by the President's Committee on Civil Rights in its Report, "To Secure These Rights," October, 1947, p. 70 (Gov. Print. Off.). Since Justice Benvenga's decision

B. The constitutional issue presented is one of general importance. It affects directly all housing constructed under the New York Redevelopment Companies Law and the many parallel laws of other States (*infra*, pp. 23-24). More broadly it affects a *kind* of institution which is certain to increase in importance in the coming years. It involves the question whether the prohibition of governmental discrimination embodied in the Fourteenth Amendment may be avoided in a contract between a State and a private company which calls for the exercise of governmental powers and the grant of governmental support.

1. Stuyvesant Town cannot be placed in any of the simple categories with which early constitutional doctrine dealt. The court below called it one of the "institutions created to meet the social and industrial necessities of our times" (R. 255). It is designed to meet needs which "cannot be remedied by the ordinary operations of private enterprise," as the New York Legislature found (Act, Sec. 2). The City itself has now officially recognized that it is at least "quasi-public housing."[4]

The essential feature of this institution is that its construction would not have been possible without active state participation, city subsidy, city condemnation and city contract. In other words, neither Stuyvesant Town

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in the trial court, it has been discussed in five articles in legal periodicals, four of which criticized the result which he reached. *"Exclusion of Negroes from Subsidized Housing Projects,"* 15 Chicago L. R. 745, 749-750; Comment, *"Race Discrimination in Housing,"* 57 Yale L. J. 426, 437-444; Note, *"Applicability of the Fourteenth Amendment to Private Organizations,"* 61 Harvard L. R. 344, 349-352; Note, *"The Disintegration of a Concept-State Action under the 14th and 15th Amendments,"* 96 Univ. of Pennsylvania L. R. 402, 413-414. The fifth reached the opposite conclusion, although it also criticized Justice Benvenga's reasoning. Comment, 34 Virginia L. R. 345 (1948). We have found no other comments either before or since the decision of the Court of Appeals.

[4] It is so described in "Housing—a Report to Mayor William O'Dwyer", published by the New York City Housing Authority in August, 1949.

nor anything like it could have been constructed by private agencies alone. As the dissenting judges noted (R. 262-263):

> Stuyvesant is in no sense an ordinary private landlord. Its title bespeaks its character. With buildings covering many city blocks, housing a population of twenty-five thousand persons, Stuyvesant is a "Town" in more than name. Its very being depended upon constitutional amendment, statutory enactment and city contract. The exercise of a number of governmental functions was absolutely prerequisite to its existence.

2. While the constitutional question raised by this cooperation between a State and private enterprise is new, the cooperation itself is not. The reason the constitutional question has not arisen before is that in the past, when the cooperation existed, a prohibition of racial discrimination was taken for granted.

Thus, condemnation and tax-exemption have traditionally been used to assist publicly-regulated utilities such as railroads and power companies. However, statutes as well as common law principles forbid arbitrary discrimination by such agencies;[5] hence, the constitutional question raised here has not arisen with respect to them.

When the State extends its power of condemnation to facilities other than public utilities, common law principles still require that the facilities be open to all. In the only two cases which we have found in which the question was raised at common law, the courts have concluded that the benefits of the exercise of eminent domain cannot be made available on a racially discriminatory basis. *Connecticut College* v. *Calvert*, 87 Conn. 421 (1913); *University of Southern California* v. *Robbins*, 37 Pac. (2d) 163 (Cal. App.), cert. denied, 295 U. S. 738 (1934).

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[5] 51 Corpus Juris, p. 7; Pond, *Public Utilities*, Vol. I, pp. 582-584 (Bobbs-Merrill, 1932); Collier, *Public Service Companies*, pp. 272-276 (F. H. Thomas, 1918). See also *Bob-Lo Excursion Co.* v. *Michigan*, 333 U. S. 28, 37, n. 16 (1948).

With Stuyvesant Town, cooperation between a State and private enterprise enters a new field, that of housing. Redevelopment laws have now been enacted in 25 States, the District of Columbia, and Puerto Rico.[6] All of these

[6] STATE	STATUTE
ARKANSAS	Ark. Stat. (1947 Rev.), Tit. 19, Sec. 3056 et seq. (Laws of 1945)
CALIFORNIA	Calif. Gen. Laws (Deering, 1947 Supp.), Act 1500, Sec. 1 et seq. (statutes of 1945 as amended, Stat. 1947)
COLORADO	Col. Stat. Ann. (Cum. Supp. 1947), Ch. 82, Sec. 62 et seq. (Laws 1945)
CONNECTICUT	Conn. Gen. Stat. (1945 Rev.), Ch. 55, Sec. 979 et seq. (Laws 1945)
DISTRICT OF COLUMBIA	D. C. Code (1948 Supp.), Ch. 7, Sec. 5-701 et seq. (Public Laws of 1945)
FLORIDA	Fla. Stat. Ann. (Cum. Supp. 1948), Ch. 421, Sec. 421.08 et seq. (Laws of 1945)
GEORGIA	Ga. Code Ann. (Cum. Supp. 1947), Tit. 99, Sec. 1201a et seq. (Acts 1946)
ILLINOIS	Ill. Stat. Ann. (Jones, 1947 Supp.), Sec. 62.123 et seq. (Laws 1947)
INDIANA	Ind. Stat. Ann. (Burns, Cum. Supp. 1947), Tit. 49, Sec. 8501 et seq. (Acts 1945)
KANSAS	Kan. Gen. Stat. (1947 Supp.), Art. 47, Sec. 17-4701 et seq. (Laws 1943)
KENTUCKY	Ky. Rev. Stat. (Baldwin, 1943), Ch. 99, Sec. 99.001 et seq. (Laws 1942)
MARYLAND	Md. Const. Art. XI B (as amended Acts of 1944, Ch. 640, ratified November, 1948)
MASSACHUSETTS	Mass. Ann. Laws (Cum. Supp. 1948), Ch. 121A, Sec. 1 et seq. (Laws 1947)
MICHIGAN	Mich. Stat. Ann. (1949 Rev.), Ch. 54, Sec. 5.3059 (1) et seq. (Acts 1941 as amended Acts 1945)
MINNESOTA	Minn. Stat. Ann. (1948 Supp.), Ch. 462, Sec. 462.411 et seq. (Laws 1947)
MISSOURI	Mo. Rev. Stat. Ann. (1948 Supp.), Ch. 38, Sec. 7875.44 et seq. (Laws 1946, as amended Laws 1947)
NEW HAMPSHIRE	N. H. Laws of 1947, Chs. 169, 210
NEW JERSEY	N. J. Stat. Ann. (1948 Supp.), Tit. 55, Ch. 140 (Laws 1944)

[Footnote 6 continued on following page.]

laws permit assembling of the land by condemnation.[7] Nine permit grants of tax exemptions in varying degrees.[8] Twenty-two permit the administering agency to regulate

[8] STATE (continued)	STATUTE
NEW YORK	N. Y. Unconsolidated Laws, Sec. 3401 et seq. (Laws 1942 as amended Laws 1943, 1947)
OREGON	Oregon Laws of 1949, Ch. 562, Sec. 1, p. 907 et seq.
PENNSYLVANIA	Penn. Stat. Ann. (Purdon, 1949), Tit. 35, Ch. 18A, Sec. 1701 et seq. (Laws 1945)
PUERTO RICO	Puerto Rico Acts of 1947, Act No. 97 (approved May 9, 1947)
RHODE ISLAND	R. I. Acts and Resolves of 1946, Ch. 1802 as amended, Acts and Resolves of 1948, Ch. 2029
SOUTH CAROLINA	S. C. Stat. at Large of 1946 No. 531, p. 1450 et seq.
TENNESSEE	Tenn. Code Ann. (Williams, 1948 Supp.), Art. II, Ch. 2B, Sec. 3647.52 et seq. (Acts 1945)
VIRGINIA	Va. Code of 1942 (Cum. Supp. 1948), Tit. 26B, Ch. 125B, Sec. 3145 (4), (8) (Acts 1946)
WISCONSIN	Wisc. Stat. (1947), Sec. 66.43 (1945 Stats.)
[7] ARKANSAS	Sec. 3058, incorporating by reference Sec. 3015
CALIFORNIA	Secs. 74, 75
COLORADO	Sec. 68 (a)
CONECTICUT	Sec. 982
DISTRICT OF COLUMBIA	Sec. 5-704
FLORIDA	Sec. 421.08, subdivision 3
GEORGIA	Secs. 1202a, 1204a
ILLINOIS	Sec. 63.137
INDIANA	Sec. 8517
KANSAS	Sec. 17-4716
KENTUCKY	Secs. 99.210 (Supp. 1949), 99.220
MARYLAND	Art. XI B, Sec. 1
MASSACHUSETTS	Ch. 121A, Sec. 11
MICHIGAN	Sec. 5.3058 (17)
MINNESOTA	Secs. 462.675, 462.445, subd. 6
MISSOURI	Sec. 7875.55
NEW HAMPSHIRE	Ch. 210, Sec. 3
NEW JERSEY	55:14D-20
NEW YORK	Sec. 3420
OREGON	Ch. 562, Sec. 3

[Footnotes 7 and 8 continued on following page.]

the use of the land and the rents and profits of the operating authority.[9]

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[7] Continued:

PENNSYLVANIA	Ch. 18A, Sec. 1712
PUERTO RICO	Act No. 97, Sec. 4
RHODE ISLAND	Acts of 1948, Ch. 2029, Sec. 2
SOUTH CAROLINA	Sec. 4, p. 1453
TENNESSEE	Sec. 3647.54
VIRGINIA	Sec. 3145 (8) (c)
WISCONSIN	Sec. 66.43 (4)

[8]

INDIANA	Sec. 8524
KANSAS	Sec. 17-4711
MASSACHUSETTS	Ch. 121A, Sec. 10
MICHIGAN	Sec. 5.3058 (12)
MINNESOTA	Secs. 462.545, 462.651
MISSOURI	Sec. 7875.53
NEW JERSEY	55:14D-20, 55:14D-23
NEW YORK	Sec. 3426
PENNSYLVANIA	Ch. 18A, Sec. 1713

In addition to these states, Connecticut, while not granting the municipality the right to exempt a redevelopment project from taxation, does grant the cities power to aid these projects by a gift of municipal funds. Gen. Stat., Ch. 55, Sec. 983.

[9]

ARKANSAS	Sec. 3058 incorporating by reference Sec. 3012
DISTRICT OF COLUMBIA	Sec. 5-709
FLORIDA	Sec. 421.08, sub. Sec. 5
GEORGIA	Sec. 1204a
ILLINOIS	Sec. 63.145
INDIANA	Sec. 8519
KANSAS	Sec. 17-4706
KENTUCKY	Secs. 99.030, 99.050
MASSACHUSETTS	Ch. 121A, Sec. 15
MICHIGAN	Sec. 5.3058 (4) (l)
MINNESOTA	Sec. 462.645, subdivision 5
NEW HAMPSHIRE	Ch. 210, Sec. 5
NEW JERSEY	55:140-15
NEW YORK	Secs. 3408, 3415
OREGON	Ch. 562, Sec. 5
PENNSYLVANIA	Sec. 1711, subdivisions (a) (9); (b)
PUERTO RICO	Act No. 97, Sec. 7
RHODE ISLAND	Acts 1946, Ch. 1802, Secs. 54, 66
SOUTH CAROLINA	Sec. 7, p. 1454
TENNESSEE	Sec. 3647.56
VIRGINIA	Sec. 3145 (8) (d)
WISCONSIN	Sec. 66.43 (6) (c)

Thus urban redevelopment has become a principal device for the replanning and rebuilding of extensive areas throughout the country. The operation of all the projects constructed under these laws may be affected by this case.

Negroes occupy many of the slum areas in our cities. In fact, the proportion of substandard housing units occupied by non-whites is almost six times that for whites and the proportion of overcrowding of non-whites exceeds by four times that for whites. [10]

These slum areas are the areas most subject to clearance under urban redevelopment.[11] Public clearance programs can eliminate the Negro population of an entire county.[12]

Neither vacant sites nor vacant residential units within the existing supply of shelter are available today to facilitate the relocation of these minorities.[13] Thus, unless they are assured of equal treatment in the new projects, tens of thousands of Negro families, regardless of their economic status, may be rendered homeless in the name of urban redevelopment.

It is therefore very important that the long-debated question whether there may be racial discrimination in redevelopment projects be finally decided. Uncertainty on this issue creates serious difficulties in the administration of the new statutes. The four to three decision below cannot be regarded as the final answer by the administering state and city agencies or by the growing number of private companies operating the projects.

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[10] *Housing of the Non-White Population,* Washington, D. C., Housing and Home Finance Agency, June, 1944.

[11] Robert Weaver, *Negro Ghettos,* New York, Harcourt, Brace & Co., 1948; p. 326.

[12] Hearings before a Sub-Committee of the Committee on the District of Columbia, U. S. Senate, 78th Congress, April, May, June, 1944, pp. 1129, 1131.

[13] George B. Nesbit, Racial Relations Officer, Public Housing Administration, "Relocating Negroes from Urban Slum Clearance Sites," *Land Economics,* August, 1949, p. 279.

The issue, however, also cuts deeper. There is no reason why this new form of state cooperation with private enterprise should be limited to urban redevelopment. As the court below recognized, Stuyvesant Town is but a sample of the "increasing and fruitful participation of government, both State and Federal, in the industrial and economic life of the nation" (R. 256).

Under our Constitution, this participation cannot be governed solely by the morals of the marketplace. Whether the Stuyvesant Town housing is worth the amount which went into its subsidies is unimportant. Agreements between States and private parties cannot be tested merely by examining the *quid pro quo*. In the words of the dissenting judges below (R. 266):

> It is impossible to balance the essence of democracy against fire-proof buildings and well-kept lawns, and, fortunately, the Constitutions, Federal and State, forbid our putting the former into the judicial scales just as they forbade the city officials from putting it upon the bargaining table. The mandate that there be equal protection of the laws, designed as a basic safeguard for all, binds us and respondents as well to put an end to this discrimination.

CONCLUSION

This case deals with a third attempt to corrupt a legitimate device for sound community planning into an instrument for enforcing racial segregation. The first, the zoning ordinance, was designed to promote sound neighborhoods. Soon it became a device for segregating Negroes. When it was invalidated by this Court in 1917 (*Buchman* v. *Warley*, 245 U. S. 60), the racial restrictive covenant came into vogue. Originally designed to exclude glue and gunpowder factories, charnel houses and other intrusions upon neighborhood dignity, the covenant became a device to bar whole races from shelter. It was held

unenforceable by this Court in 1948 (*Shelley* v. *Kraemer*, 334 U. S. 1). Now urban redevelopment laws, enacted to clear and rehabilitate slums, are being corrupted to remove unwanted minorities from building sites and to keep them out of the newly built neighborhoods. The device of "cooperation" between the State and private enterprise becomes "cooperation" to exclude Negroes. Thus again an effort is made to turn a useful social reform into an instrument for oppression and this Court is again called upon to prevent impairment of the fundamental constitutional principle of equality.

For the reasons stated above, we respectfully submit that this petition for a writ of certiorari should be granted.

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October 14, 1949.

APPENDIX

1. United States Constitution, Fourteenth Amendment

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * * *

2. New York State Constitution, Article XVIII

Section 1. Subject to the provisions of this article, the legislature may provide in such manner, by such means and upon such terms and conditions as it may prescribe for low rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto.

Section 2. For and in aid of such purposes, notwithstanding any provision in any other article of this constitution, but subject to the limitations contained in this article, the legislature may * * * grant or authorize tax exemptions in whole or in part, except that no such exemption may be granted or authorized for a period of more than sixty years; authorize cooperation with and the acceptance of aid from the United States; grant the power of eminent domain to any city, town or village, to any public corporation and to any corporation regulated by law as to rents, profits, dividends and disposition of its property or franchises and engaged in providing housing facilities. * * *

3. Redevelopment Companies Law of New York State (Laws 1942, Ch. 845, as amended by Laws 1943, Ch. 234, McKinney's Unconsolidated Laws, Sections 3401-3426)

* * * * * *

Section 2. Policy of state and purpose of act. It is hereby declared that in certain areas of municipalities located within this state there exist substandard conditions and insanitary housing conditions owing to obsolescence, deterioration and dilapidation of buildings, or excessive land coverage, lack of planning, of public facilities, of sufficient light, air and space, and improper design and arrangement of living quarters; that there is not in such areas a sufficient supply of adequate, safe and sanitary dwelling accommodations properly planned and related to public facilities; that modern standards of urban life require that housing be related to adequate and convenient public facilities; that the aforesaid substandard and insanitary conditions depress and destroy the economic value of large areas and by impairing the value of private investments threaten the sources of public revenues; that the public interest requires the clearance, replanning, reconstruction and neighborhood rehabilitation of such substandard and insanitary areas, together with adequate provision for recreational and other facilities incidental and appurtenant thereto according to the requirements of modern urban life and that such clearance, replanning, reconstruction and neighborhood rehabilitation are essential to the protection of the financial stability of such municipalities; that in order to protect the sources of public revenue it is necessary to modernize the physical plan and conditions of urban life; that these conditions cannot be remedied by the ordinary operations of private enterprise; that provision must be made to encourage the investment of funds in corporations engaged in providing redevelopment facilities to be constructed according to the requirements of city planning and in effectuation of official city plans and regulated by law as to profits, dividends and

disposition of their property or franchises; that provision must be made to enable insurance companies to provide such facilities, subject to regulation by law as to the return from such facilities and the disposition of property acquired for such purpose; and that provision must also be made for the acquisition for such corporations and companies at fair prices of real property required for such purposes in substandard areas and for public assistance of such corporations and companies by the granting of partial tax exemption; that the cooperation of the state and its subdivisions is necessary to accomplish such purposes; that the clearance, replanning and reconstruction, rehabilitation and modernization of substandard and insanitary areas and the provision of adequate, safe, sanitary and properly planned housing accommodations in effectuation of official city plans by such corporations and companies in these areas are public uses and purposes for which private property may be acquired for such corporations and companies and partial tax exemption granted; that these conditions require the creation of the agencies, instrumentalities and corporations hereinafter prescribed for the purpose of attaining the ends herein recited; and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

Section 3. As used in this act, the following terms shall mean and include:

* * * * * *

10. "Supervising agency." The municipal comptroller in a municipality having a comptroller; in a municipality having no comptroller, the chief financial officer of such municipality. However, as to any insurance company providing dwelling accommodations pursuant to this act, or if any of the stock and income debenture certificates having voting power of a redevelopment company are or are

to be issued to one or more insurance companies, the term shall mean only the superintendent of insurance.

Section 4. A redevelopment company may be created by three or more persons signing, acknowledging and filing a certificate which shall contain:

* * * * * * *

11. A provision that, so long as this act shall remain applicable to any project of the redevelopment company, the real property of the redevelopment company shall not be sold, transferred or assigned except as permitted by the terms and provisions of this act.

* * * * * * *

13. A declaration that the redevelopment company has been organized to serve a public purpose and that it shall be and remain subject to the supervision and control of the supervising agency except as provided in this act, so long as this act remains applicable to any project of the redevelopment company; that all real and personal property acquired by it and all structures erected by it, shall be deemed to be acquired or created for the promotion of the purposes of this act.

14. A declaration that, after providing for all expenses, taxes and assessments, there shall be paid annually out of the earnings of the redevelopment company for interest, amortization, depreciation and dividends, a sum equal to but not exceeding six per centum of the total actual final cost of the project as defined by subdivision two of section thirteen of this act; that the obligation in respect to such payments shall be cumulative, and any deficiency in interest, amortization, depreciation and dividends in any year shall be paid either from any cash surplus derived from earnings remaining in the treasury of the redevelopment company in excess of the amount necessary to provide such cumulative annual sums or from the first available earnings in subsequent years; and that any cash surplus derived from earnings remaining in the treasury of the

redevelopment company, in excess of the amount necessary to provide such cumulative annual sums shall, upon dissolution of the company, be paid into the general fund of the municipality.

* * * * * *

Section 5. If any certificate of incorporation of a redevelopment company shall be presented to the secretary of state he shall not file such certificate unless a certificate of the consent of the supervising agency shall accompany the same. A certificate of amendment of a certificate of incorporation shall not be filed by the secretary of state unless a certificate of the consent of the supervising agency and a certificate of consent of the local legislative body of the municipality in which the project is located shall accompany the same.

* * * * * *

Section 8. Subject to the provisions of section twenty-four of this act, there shall be paid annually out of the earnings of the redevelopment company, after providing for all expenses, taxes and assessments, a sum for interest, amortization, depreciation and dividends, equal to but not exceeding six per centum of the total actual final cost of the project as defined by subdivision two of section thirteen of this act; the obligation in respect of such payments shall be cumulative, and any deficiency in interest, amortization, depreciation and dividends in any year shall be paid either from any cash surplus derived from earnings remaining in the treasury of the redevelopment company in excess of the amount necessary to provide such cumulative annual sums or from the first available earnings in subsequent years; and any cash surplus derived from earnings remaining in the treasury of the redevelopment company in excess of the amount necessary to provide such cumulative annual sums shall, upon dissolution of the company, be paid into the general fund of the municipality except as otherwise contemplated by subdivision five of section twenty-four of this act.

* * * * * *

Section 13. In addition to limitations prescribed by this act a redevelopment company shall not have power to:

1. Acquire any real property or interest therein for a project or projects unless the supervising agency and the local legislative body determine as provided in this act that such acquisition is necessary or convenient for the public purpose defined in this act.

2. Issue its stock, debentures and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project. The actual cost of such project shall include the cost of the lands and improvements constituting the project and charges for financing and supervision approved by the supervising agency, condemnation charges and interest and other carrying charges during the period of acquisition and of construction. The total actual final cost shall be deemed to be an amount equal to such actual cost plus an allowance for working capital. Such allowance for working capital shall not exceed an amount equal to three per centum of the estimated cost or of the total actual final cost of the project if that shall be greater than the estimated cost.

3. Enter into contracts for the payment of salaries to officers or employees, or for the construction or for the substantial repair, improvement or operation of projects except subject to the approval of the supervising agency.

Section 14. The project or projects of any redevelopment company shall be designed and used primarily for housing purposes, but portions of the project may be planned and used for business, commercial, cultural or recreational purposes appurtenant thereto as approved in the project.

Section 15. Every plan or plan of a project proposed by a redevelopment company shall contain a general description of the area to be redeveloped and a statement

of the plan of redevelopment with such detail of information with reference thereto as may be necessary to a general understanding thereof.

After preliminary approval thereof by the supervising agency as to conformity with the provisions and purposes of this act, every such plan or plan of a project shall be submitted to the planning commission for approval of the plan or plan of the project relating to:

1. Height and bulk of structures, density of population, and percentage of land coverage by structures as to their conformity with the purposes of this act and with the master plan, if any; and the relationship of the density of population contemplated by the plan or plan of the project to the distribution of the population of the municipality in other areas or parts thereof, and

2. Provision, if any, for business or commercial facilities appurtenant to the plan or project relationship to existing and planned public facilities, adequacy and planned rearrangement of street facilities and provisions for light, air, cultural and recreational facilities as to their conformity with the purposes of this act and their adequacy for accommodation of the density of population contemplated by the plan or plan of the project.

The planning commission, after public hearing on a plan or plan of a project, may:

a. Issue an unqualified certificate of approval thereof, or
b. Issue a certificate of conditional or qualified approval thereof, with or without recommendations, or
c. Disapprove thereof.

After action thereon by the planning commission, such plan or plan of a project with a proposed form of contract between the municipality and the company or, when all stock, debentures and mortgage bonds of the company are owned or are to be owned by one or more insurance companies, between the municipality, redevelopment company and such insurance company or companies shall be sub-

mitted by the redevelopment company, with a certificate of approval of the supervising agency and the certificate or a statement of action on the plan or project by the planning commission, to the local legislative body for its approval as to conformity with the provisions and purposes of this act, the extent of the tax exemption to be granted pursuant to section twenty-six, the amount and nature of the property to be condemned for the redevelopment company by the municipality and the terms and conditions of payment therefor by the redevelopment company, the amount of publicly owned land or facilities to be sold to the redevelopment company or exchanged for redevelopment company-owned lands and the availability of other suitable dwelling accommodations for families living in the area or part thereof to be affected by the plan or plan of the project.

As part of an approved project the local legislative body may require a redevelopment company to dedicate to the municipality or any agency thereof in the manner provided by law specified portions of the land in a project for parks, streets, public recreational and other public purposes.

The contract shall regulate the rents to be charged for rooms in the project and may contain such other provisions, not inconsistent with this act, as may be deemed necessary or desirable for the financing, construction, operation and supervision of the project.

In any case where the planning commission shall have issued a certificate of unqualified approval of a plan or plan of a project approval thereof by the local legislative body may be by resolution adopted by a majority of the whole number of votes authorized to be cast by all of the members thereof. In any case where the planning commission shall not have issued a certificate of unqualified approval, the plan or plan of a project may nevertheless be approved by the local legislative body, after public hearings thereon, by resolution adopted by a three-fourths vote of the whole number of votes authorized to be cast by all

of the members thereof. The local legislative body is authorized to enter into the necessary contract or contracts on behalf of the municipality.

If the contract parties are a municipality, a redevelopment company and one or more insurance companies which own or will own all of the stock, debentures, bonds and mortgage indebtedness of such redevelopment company, or if the project is undertaken by an insurance company, then the certificate of the supervising agency approving such contract shall terminate the functions of the supervising agency pursuant to this act, and after the execution of such contract all references herein to the approval or other action by the supervising agency shall be inapplicable to the project provided for in such contract and to such redevelopment company or the insurance company undertaking such project.

Section 16. It shall be unlawful during the period of tax exemption, granted pursuant to section twenty-six of this act, for any redevelopment company or any successor in interest to its title to a project or any part thereof to change or modify any feature of a project for which approval of the planning commission is required by this act, without the approval of such commission, except by a three-quarters vote of the local legislative body.

* * * * * *

Section 20. A municipality may take property by condemnation for a redevelopment company, provided the contract or contracts executed pursuant to section fifteen contain a requirement that the company shall pay to the municipality all sums expended or required to be expended by the municipality in the acquisition of such real property, provision as to the time of payment and manner of securing payment thereof, and provisions requiring that the municipality receive, before proceeding with the acquisition of such real property, such assurances as to payment or reimbursement by the redevelopment company, or otherwise, as the local legislative body may deem advisable.

• • • Upon compliance by the redevelopment company with the applicable terms and conditions of such contract or contracts the municipalitity shall proceed to acquire title to the real property and when title to the real property shall have vested in the municipality, it shall convey the same to the redevelopment company upon final compliance by the redevelopment company with such terms and conditions. As soon as title shall have vested in the municipality, the redevelopment company may, upon the authorization of the mayor, enter upon the real property taken, take over and dispose of existing improvements, and carry out the terms of the project with respect thereto.

Real property in an area, needed or convenient for the project, which is to be acquired by condemnation pursuant to this section, may be acquired by the municipality for the project, including any property devoted to a public use, whether or not held in trust, notwithstanding that such property may have been previously acquired by condemnation or is owned by a public utility corporation, it being hereby expressly determined that the public use in conformity with the provision of this act shall be deemed a superior public use. The local legislative body may consent to the condemnation of property owned by the municipality, whether or not such property be held in trust, or may sell or lease any such property necessary or convenient for a project of a redevelopment company without public bidding, provided notice of such sale or lease is published and a public hearing is held before the local legislative body. The term of any such lease shall not be limited by any provision of any general, special or local law or city charter limiting the period of time during which a lease or any renewal thereof may run. Real property belonging to a public utility corporation may not be acquired without the approval of the commission or other office or tribunal having regulatory power over such corporation.

An award of compensation shall not be increased by reason of any increase in the value of the real property

caused by the assembly, clearance or reconstruction, or proposed assembly, clearance or reconstruction for the purpose of this act of the real property in an area.

A local legislative body, upon payment therefor or upon exchange for other lands, may convey to any redevelopment company land in any street or public place which is duly closed or discontinued pursuant to the plan of a project.

* * * * * *

Section 21. The supervising agency shall:

Examine each redevelopment company and keep informed as to its general condition, its capitalization and the manner in which its property is constructed, leased, operated or managed with respect to its compliance with all provisions of law and orders of the supervising agency.

The supervising agency may:

1. Either itself or through its inspectors or employees duly authorized by it, enter in or upon and inspect the property, esuipment, buildings, plants, offices, apparatus and devices of any redevelopment company; examine all books, contracts, records, documents and papers of any redevelopment company and by subpoena duces tecum compel the production thereof.

2. In its discretion, prescribe uniform methods and forms of keeping accounts, records and books to be observed by redevelopment companies, and after a hearing to prescribe by order accounts in which particular outlays and receipts shall be entered, charged or credited.

3. Require specific answers to questions upon which it may desire information and require the filing of periodic reports in the form, covering the period, and at the time prescribed by it.

* * * * * *

Section 23. Until the termination of the tax exemption, whether by expiration or by any other cause, a redevelopment company, heretofore or hereafter organized, shall not have power to sell any project without the consent of the local legislative body.

* * * * * *

Section 24. 1. After termination of any tax exemption granted pursuant to section twenty-six of this action, whether by expiration or by any other cause, or in the event that prior thereto the redevelopment company elects to pay to the municipality the total of all accrued taxes for which such exemption was granted and received, together with interest at the rate of five per centum per annum, the redevelopment company may voluntarily dissolve, and title to the project may be conveyed in fee to the owner or owners of its capital stock or to any corporation designated by it or them for the purpose, or the redevelopment company may be dissolved and reconstituted pursuant to appropriate laws relating to the formation and conduct of corporations, after providing, in any case, for the payment of all current operating expenses, taxes, indebtedness and all accrued interest thereon, and the par value of and accrued dividends on the outstanding stock of the redevelopment company. If, after making such provision and after the conveyance of the project, a cash surplus remains in the treasury of the redevelopment company, such cash surplus shall, upon dissolution, be paid into the general fund of the municipality. After such dissolution and conveyance or such reconstitution, the provisions of this act shall become and be inapplicable to any such project and its owner or owners, and any tax exemption granted to such redevelopment company pursuant to section twenty-six of this act shall cease and terminate.

2. If prior to the termination of any tax exemption the project is sold for any reason, the redevelopment company shall dissolve, and any tax exemption granted to such redevelopment company pursuant to section twenty-

six of this act shall cease and terminate, except as otherwise provided in section twenty-three of this act. In such case the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and the face value of their income debenture certificates with accrued and unpaid dividends or interest upon such stock and income debenture certificates, and any remaining surplus shall be paid into the general fund of the municipality.

3. In no event shall a redevelopment company be voluntarily dissolved unless provision is made for the payment in full of the remaining balance of principal and interest due or unpaid upon any mortgage on its property or any part thereof, but any project may, with the consent of the local legislative body of the municipality, be conveyed and transferred to the municipality subject to such mortgage and accrued interest.

4. Unless the local legislative body of the municipality shall consent to the voluntary dissolution of a redevelopment company, such a company shall not dissolve except in accordance with subdivisions one and two of this section or upon the expiration of the period of corporate existence as fixed by its certificate of incorporation.

5. With the consent of the local legislative body and the superintendent of insurance, a redevelopment company heretofore or hereafter organized may voluntarily dissolve prior to the termination of any tax exemption granted pursuant to section twenty-six of this act and title to the project may be conveyed, and all other assets of such redevelopment company may be transferred, to an insurance company, whether or not such project shall have been theretofore completed. After such dissolution and conveyance such tax exemption shall continue for the period of years originally provided for in the contract, or for the unexpired portion thereof if such period shall have theretofore commenced, subject to prior termination pursuant to

section twenty-five or section twenty-six of this act, and the provisions of this act shall thereafter be applicable to such project and to such insurance company to the same extent and with the same force and effect as though such project had been initially undertaken by such insurance company pursuant to section twenty-five of this act; provided, however, that nothing herein contained shall be deemed to require the re-submission of the plan of the project and the contract relating thereto for approval pursuant to section fifteen of this act.

6. The contract with the municipality may contain such other provisions for the dissolution of the redevelopment company as may be deemed advisable, not inconsistent with the provisions of this section. In case of a dissolution and conveyance in accordance with subdivision five of this section, the contract may be modified consistently with the provisions of said subdivision five and section twenty-five of this act, any such modifications to be approved by the superintendent of insurance and the local legislative body.

7. Upon dissolution as provided in this section, this act shall become and be inapplicable to the project and its owner or owners except as otherwise contemplated by subdivision five of this section.

* * * * * *

Section 26. The local legislative body of any municipality in which a project of such company is or is to be located may by contract agree with any redevelopment company to exempt from local and municipal taxes, other than assessments for local improvements, all or part of the value of the property included in such project which represents an increase over the assessed valuation of the real property, both land and improvements, acquired for the project at the time of its acquisition by the redevelopment company which originally undertook the project and for such definite period of years as such contract may provide. The tax exemption shall not operate for a period

of more than twenty-five years, commencing in each instance from the date on which the benefits of such exemption first become available and effective.

A redevelopment company which has been granted and has received tax exemption pursuant to this section may at any time elect to pay to the municipality the total of all accrued taxes for which exemption was granted and received, together with interest at the rate of five per centum per annum. Upon such payment the tax exemption of the project shall thereupon cease and terminate.

4. New York City Administrative Code

Section J41-1.2. Discrimination in Tax Exempt Projects. No exemption from taxation, for any project, other than a project hitherto agreed upon or contracted for, shall be granted to a housing company, redevelopment company or redevelopment corporation, which shall directly or indirectly, refuse, withhold from, or deny to any person any of the dwelling or business accommodations in such project or property, or the privileges and services incident to occupancy thereof, on account of the race, color or creed of any such person.

Any exemption from taxation hereafter granted shall terminate sixty days after a finding by the supreme court of the state of New York that such discrimination is being or has been practiced in such project or property; if within sixty days such discrimination shall have been ended, then the exemption shall not terminate. (As added by L. L. 1944, No. 20, July 3.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 402

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,
Petitioners,

VS.

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITIONERS' REPLY BRIEF

This reply brief is submitted in order to clarify certain factual questions raised by respondents' brief in opposition to our petition for certiorari. We make no effort here to discuss the basic differences between the parties since we believe that the brief in opposition itself plainly discloses that the question raised by the petition is substantial and important.

1. Respondents state on page 48 that "under the Statute" the tax exemption and, with it, the limitation on rents, may be lifted at any time if the owner elects to pay up the accrued taxes and dissolve the redevelopment company. While this is true "under the Statute", it is not true with respect to the Stuyvesant Town Project. The contract between the City and respondents prevents resort to this aspect of the Act for five years after completion of the project, which is when the tax exemption commences (R. 109, 120). We have been advised by the New York State Tax Department that the exemption went into effect on July 1, 1949. Hence, it must continue at least until June 30, 1954. Moreover a repayment of the taxes obviously would not undo the benefits of the condemnation proceedings which assembled the plot.

In any case, we believe it is irrelevant whether the tax exemption and rent control may be lifted. They have not been lifted. The present tenants, selected discriminatorily, are enjoying their benefits.

2. Respondents urge that the tax exemption is not paid for by city residents because it costs the City nothing (pp. 41-43). Commissioner Moses and the City have only recently described this exemption in its true terms as a "subsidy" ("Housing—A Report to Mayor William O'Dwyer", published by the New York City Housing Authority in August, 1949). As to this, we respectfully refer this Court to the exposition of the effects of tax exemption in an article entitled "Tax Subsidies for Rental Housing", by Walter J. Blum and Norman Bursler, 15 Chicago L. R. 255. That article shows that, even a tax exemption which does not lower taxes on a piece of property but merely freezes them at a given rate, lowers the total tax return to a city. In addition, the decisive issue here is not the cost to the City but the disposition of benefits created by city and state action.

3. Respondents assert that they were given no power of condemnation "directly or indirectly" (p. 46). That statement is plainly erroneous. Although the condemnation was conducted in the City's name, the real authority to condemn lay with respondents. The contract provided that "the City, at the request of the Corporation, shall institute" the necessary proceedings (R. 96). The City was given no discretion in the matter. The condemnation power was invoked only as to those parts of the tract which Metropolitan had not already acquired (R. 100). Moreover, the Corporation paid for the condemnation as it went along (R. 97).

In any case, the difference between condemnation *by* respondents and condemnation by the City *for* respondents is certainly without any significant bearing on the constitutional issue.

4. Respondents describe as "misleading" our contention that the City assisted the project with a transfer of land which gave the project a net gain of 500,000 square feet, or nearly 19% of the total area (p. 46). Our statement is in the language of the complaint, the allegations of which are deemed true at the present stage in the proceeding (R. 68-69). Moreover, respondents' only answer to this allegation is a reference to a bare assertion by Commissioner Moses at the Board of Estimate hearing in 1943 that the exchange actually benefited the City (R. 151). However, Commissioner Moses did not explain then or at any other time how he arrived at that conclusion.

5. Respondents note that certain statutory controls by the supervising agency were terminated pursuant to Section 15 when the Superintendent of Insurance approved the contract (pp. 47-48). None of the statutory controls referred to in our petition (pp. 6, 13-14) were affected by this provision and the various controls specified in the contract are likewise unaffected.

6. Respondents assert that "neither the phrase 'moderate rent housing' nor its equivalent appears in either the Constitutional or the Statutory provisions relating to rehabilitation" (p. 31, note). It is true that this *phase* does not appear. But the statute *requires* construction and operation of just such housing, as we show in our petition (pp. 6, 13).

Failure to recognize the existence of this requirement is an outstanding feature of the Brief in Opposition. It ignores the central fact that 25,000 people are now enjoying the benefits of moderate rent housing, made possible and required by the State and City. In view of the plain requirement of the statute and contract that housing be created and that the rents in such housing be limited, it cannot be said that the state powers were not used to create that benefit.

7. Respondents argue that the sole purpose of the Redevelopment Companies Law and the contract with the City was slum clearance and rehabilitation (pp. 20-21, 31, 32). We submit that the Stuyvesant Town Housing project and the provision of apartments for 8,700 families cannot be viewed as something that just happened—as an incidental result of what was unquestionably state action. It was part of the constitutional, statutory and contractual scheme that additional housing units be made available at moderate rents; the State and City continue to play an integral part in the operation, even though the housing has been completed and is now being occupied.

In support of their argument, respondents urge that the New York State Constitution distinguishes between low rent and limited rent housing and permits only the former to be constructed, owned and operated by public agencies (pp. 5-7). They urge that, "The absence of an intent on the part of the State to convert the activity to a public activity is apparent from the history of the Housing Article and the Statute" (p. 52). As a matter of fact, New York City is at this moment renting public housing at about $17 a room, the same rate as that approved by the City for

Stuyvesant Town (R. 67; statement of New York City Housing Authority, released September 10, 1949, and October 29, 1949).

In any event, we submit that the "intent" of the Legislature as to whether or not the project would be "a public activity" is irrelevant. There is no question but that the State, by appropriate constitutional and statutory provisions, could provide such housing as Stuyvesant Town through its own instrumentalities. Its decision to do so by "cooperation" with private enterprise does not sterilize the results of all public character.

Respondents rely on *Murray* v. *LaGuardia*, 291 N. Y. 320 (1943), cert. denied 321 U. S. 771. We do not believe that the Court of Appeals there held, as respondents insist (pp. 20, 22, 25, 31, 45), that the public purpose of the statute was entirely satisfied as soon as the last brick was put in place. But even if there was such a holding, it would not control the constitutional question here. If the Stuyvesant Town apartments were provided by "State action", within the meaning of the decisions of this Court, it makes no difference how the operation was viewed by the state legislature or courts.

8. Running through the Brief in Opposition is the suggestion that petitioners "would foreclose the state from cooperation with private enterprise" (pp. 23-24) and that they would make it impossible for the State to "deal flexibly and progressively with the many intricate problems raised by modern day civilization" (pp. 52, 53). It is argued that this Court should not "negate" the decision of the New York State Legislature that the exercise of state powers and supervision was necessary and desirable in order to achieve the legitimate public objectives of moderate rent housing (p. 40, note).

Manifestly, we are not arguing that the judgment of the State as to how to obtain housing should be overruled. We urge only that racial discrimination in selecting the Stuyvesant Town tenants is unconstitutional and should

be enjoined and that it makes no difference that the discrimination is effectuated by cooperation with private enterprise rather than by direct state action.

Respectfully submitted,

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November 22, 1949.

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Supreme Court of the United States

OCTOBER TERM, 1949

No. 402

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,

Petitioners,

v.

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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v.
STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY
Respondents.
No. 402

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The respondent corporations (herein referred to as "Stuyvesant" and "Metropolitan") have constructed at their own expense and are the sole owners of a housing project in the City of New York known as Stuyvesant Town. In the operation of this project the respondents are engaged on their own behalf, and not on behalf of the State, in the conduct of a private business for profit. The New York courts have held that in selecting tenants of their own choice for this project the respondents possess the same rights possessed by other private owners of property in New York. The petitioners challenge this holding, claiming that the New York courts erred in not imposing upon the respondents the restraints of the Fourteenth Amendment.

Constitutional and Statutory Provisions Involved

Inasmuch as the Appendix to the Petition does not contain all the pertinent provisions of the Housing Article of the New York Constitution (Article XVIII), hereinafter called the Housing Article, and the New York Redevelopment Companies Law (New York, Laws, 1942, Ch. 845, as amended, McKinney's Unconsolidated Laws, §§ 3401-3426), hereinafter sometimes called the "Statute", the Article and the Statute are set out in full under separate cover and are submitted herewith to the Court.

Question Presented

The question is whether or not Stuyvesant, a private corporation organized under the Statute, has as a private landlord the right to select tenants of its own choice.

Statement of Facts

1. The Project.

Stuyvesant, a wholly owned subsidiary of Metropolitan, has constructed a housing project in the lower East Side of the City of New York—an area which the City desired to have rehabilitated, the City Planning Commission having found it substandard and insanitary. The project was undertaken pursuant to the Statute. Not one dollar of public funds has been contributed to the enterprise; the entire cost — upwards of $90,000,000 — having been paid by Stuyvesant.

It is the legal duty of the directors of Metropolitan and Stuyvesant, both private corporations, to adopt policies which will protect the safety of investments made for the

benefit of policyholders. In performing that duty the directors decided that apartments in the Stuyvesant project should not, at this time, be rented to Negroes. In managing a similar rehabilitation project in another area of the City, also financed and operated by a wholly owned subsidiary, the directors adopted the policy of accepting Negroes as tenants, and that project, known as Riverton, is now occupied principally by them (R. 83-84). These decisions were based on business judgment which seemed at the time, with due regard for the safety of the investments, most appropriate for the operation of these two projects.

2. The Constitutional Policy.

The menace of slums has long been recognized as a critical problem in the State of New York. As its Court of Appeals said in *New York City Housing Authority* v. *Muller*, 270 N. Y. 333 (1936), at page 341:

> "The Session Laws for nearly seventy years past are sprinkled with acts applying the taxing power and the police power in attempts to cure or check it. The slums still stand. The menace still exists."

Ten years prior to the *Muller* decision the State Legislature had attempted to enlist the aid of private capital by enacting the State Housing Law (New York, Laws 1926, ch. 823). Unlike the Statute, the State Housing Law provided for creation of housing companies which, although they were to be financed by private capital, were declared to be agencies and instrumentalities of the State. They were also subjected to the control of the State Superintendent of the Division of Housing, who was empowered to regulate their operations in many details (section 15), fix

rentals, control the selection of tenants (section 16), and issue and enforce orders (section 19).*

Of fourteen projects undertaken in twelve years under that law, only seven were erected in slum areas (Report of the State Board of Housing, Legislative Document 1939, No. 60). All fourteen involved an investment of only $30,000,000, and comprised an area of but 47.68 acres (Report, pp. 29, 85). As the Court said in the *Muller* case (270 N. Y. p. 342) with respect to the 1926 law:

> "After ten years of experiment its use, for economic reasons, * * * proved inadequate as a solution."

In 1934 another approach to the slum clearance problem was taken. By New York Laws of 1934, Chapter 4, the Legislature provided for the creation of municipal housing authorities, as public corporations, to engage in slum clearance by erecting and operating low rent housing projects for persons of low income. This, too, proved inadequate; by 1938 only three projects, comprising approximately 47 acres, were completed (Report, p. 89).

During the depression years of the 1930's, the slum problem in New York cities had become so vast and its burden upon the credit of municipalities so severe that the subject became of prime concern to the Constitutional Convention of 1938 (New York State Constitutional Con-

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*The 1926 Act has been repealed (New York, Laws, 1939, Ch. 808, §§226-227). But see sections 181, 182 and 188 of the State's Public Housing Law (Laws, 1939, Ch. 808, as amended, McKinney's Consolidated Laws of New York, Ch. 44-A, *infra*, p. 10) which correspond in substance to the provisions of sections 15, 16 and 19 of the 1926 Act, as amended.

vention (1938) Revised Record Vol. II, pp. 1499-1664; Vol. III, pp. 1665-1717). The delegates discussed the problem from every aspect and stressed the effect of blighted areas upon the credit of municipalities and the health of the people. The slum area in New York City was estimated at more than 17 square miles (Id. Vol. II, p. 1515), being 5.3% of the total area of the City.

Experience under the 1926 and the 1934 Statutes, which provided for construction *by agencies and instrumentalities of the State,* having demonstrated that rehabilitation could not be achieved through the construction of publicly aided low rent housing alone, it was recommended that only portions of such areas should be used for public housing, and that other portions should be rehabilitated by the erection of residential housing and other facilities by private enterprise (Id. Vol. II, p. 1534; III, p. 1706). As a result of the debate, the Housing Article of the Constitution was proposed by the Convention and adopted by the People of the State in the fall of 1938.

By section 1 the Article enunciates two distinct purposes:

> "Subject to the provisions of this article, the legislature may provide in such manner, by such means and upon such terms and conditions as it may prescribe for low rent housing for persons of low income as defined by law, *or* for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto." (Italics supplied.)

In discussing these purposes, the New York Court of Appeals said in *Murray* v. *LaGuardia*,* 291 N. Y. 320 (1943); cert. den. 321 U. S. 771, at pp. 331-332:

> "The two purposes, however, are distinct, one being designed to authorize low rent housing for persons of low income as defined by law, the other authorizing appropriate legislation to bring about the clearance and rehabilitation of substantard areas as a means to protect public health and morals and to restore and preserve the financial stability of municipalities which suffer indirectly from conditions existing in those blighted districts. (See New York State Constitutional Convention [1938], Revised Record, vol. II, pp. 1533, 1559, 1567, 1568, 1577, 1581). The project with which we are now concerned [Stuyvesant Town] involves the clearance and rehabilitation of a substandard and insanitary area—*not* low rent housing for persons of low income." (Italics supplied.)**

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*In the *Murray* case, the Court of Appeals upheld the exercise of condemnation and the grant of partial tax exemption as inducements to the construction of the present project, and emphasized that when the project was completed, the public purpose was accomplished. See also *Belovsky* v. *Redevelopment Authority*, 357 Pa. 329, 54 A. (2d) 277, 172 A. L. R. 953 (1947); *People* v. *City of Chicago*, 394 Ill. 477, 68 N. E. (2d) 761 (1946); and *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N. E. (2d) 18 (1945).

**The nature of rehabilitation as distinguished from low rent housing, was also emphasized at the New York State Constitutional Convention (N. Y. State Constitutional Convention 1938, Revised Record, Vol. II, p. 1531):

> "It will be helpful at the outset to emphasize the distinction between slum clearance and low-rent housing. Slum clearance is the redemption of areas where the physical condition of the housing and the neighborhood is so squalid, so demoralized, so lacking in light, ventilation, fire protection and sanitation, so overcrowded with buildings and people that the existence of such areas endangers the health, safety and morals of those living there and impairs the welfare of the entire community wherein such areas exist."

The whole Article is instinct with the idea that low rent housing for persons of low income should be a function of government, whereas the building and operation of redevelopment housing other than low rent housing should be the function of private enterprise. With respect to low rent housing for persons of low income, the Article authorized the Legislature to provide state loans and state subsidies (section 2), and for such purposes to incur state indebtedness to an aggregate of $300,000,000 without submission to the people (section 3). Moreover, it contemplated that municipalities guarantee the principal and interest of obligations incurred by public corporations engaged in this endeavor (section 2).

Section 10, however, specifically negated any authorization to the State or City to engage in rehabilitation by housing other than low rent housing:

> "* * * nothing in this article contained shall be deemed to authorize or empower the state, or any city, town, village or public corporation, to engage in any private business or enterprise other than the building and operation of low rent dwelling houses for persons of low income as defined by law, * * *"

Thus, the Article not only confines the sphere of government in the field of housing to the financing, construction and operation of low rent dwelling houses for persons of low income—which Stuyvesant Town is *not*—but it also makes clear that rehabilitation through the "building and operation" of housing other than low rent housing—which Stuyvesant Town *is*—is "private business or enterprise".

Moreover, it confers on the Legislature plenary power and discretion to provide "the manner", "the means" and "the terms and conditions" for accomplishing the purposes

of the Article (section 1). Thus, as a matter of constitutional policy, the Legislature is empowered to solicit the resources of private capital toward accomplishing the rehabilitation purpose and, under the provisions of the Article, rehabilitation projects constructed by private capital shall remain "private business or enterprise" (section 10).

Consistently with this State constitutional policy, attempts to impose any constitutional restrictions upon the right of private enterprise to select tenants of its own choice have been rejected. (1938 New York Constitutional Convention, Int. 597, Pr. No. 625; Int. 667, Pr. No. 750). See the opinion of the Court below, R. 252, and *Pratt* v. *LaGuardia,* 182 Misc. 462, aff'd. 268 App. Div. 973; appeal dismissed 294 N. Y. 842 (1945).

3. The Statute.

Exercising the power conferred upon it by the Housing Article to enlist the aid of private enterprise, the State Legislature enacted the Redevelopment Companies Law in 1942 (New York, Laws, 1942, ch. 845). Thereafter, the City undertook to persuade insurance companies to locate housing projects in areas where the improvements would displace slums, but the negotiations failed (R. 134, 135, 145). Amendments to the Statute were then sought to provide a workable law to induce the undertaking of such projects by private enterprise (R. 134, 135, 146) and the result was the general amendment of the Statute in 1943 (New York, Laws, 1943, ch. 234).

The policy of the Statute is to effectuate the public purpose of rehabilitation of blighted areas by supplanting existing structures in such areas with newly constructed, privately-owned and operated housing projects. To enable

municipalities to make rehabilitation in this manner feasible, the Statute authorized them to exercise the power of condemnation and to sell or exchange publicly owned property (section 20), and to grant tax exemption upon the enhanced value of property in the area created by the improvements (section 26). Powers of management not inconsistent with the Statute are vested in the redevelopment company (section 7). In conformity with the mandate of the Housing Article, the Statute imposes no restriction upon the right of a redevelopment corporation to select tenants of its own choice, but instead leaves with private enterprise financing and constructing such projects the usual rights of management.

This policy of the Legislature is made doubly clear by the memorandum furnished the Governor by Commissioner Moses of New York City while the 1943 amendments were pending before the Governor. That memorandum, filed at the request of Mayor LaGuardia, stated (R. 140-141):

> "There is also an unexpressed, but implied criticism, that no public agency, city or state, will control the selection of tenants by the insurance company. The answer is that if such a provision were written into the law, no company would operate under it.
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> * * * *
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> "The Mayor, Comptroller and other city officials who have studied the amendments carefully believe that the bill is fair, that it fully protects the public interest, and, in addition, that it is the only practical means of inducing great reservoirs of private capital to enter the housing and slum clearance field. We are sure that you will agree that these organizations should be encouraged to enter this field, and respectfully urge that you sign this bill as soon as possible."

In approving the bill, the Governor noted in his memorandum that the bill was designed to encourage private investments in the housing field (R. 79).

Repeated attempts have been made in the Legislature to alter the policy of the Statute by incorporating amendments which would restrict the power of redevelopment companies to select tenants of their own choice. All such attempts have failed. (See, as examples: 1948 Session: New York, Ass. Int. 127, Pr. No. 127; Ass. Int. 217, Pr. No. 217; Ass. Int. 1270, Pr. No. 1294; 1947 Session: Ass. Int. 35, Pr. No. 35; Ass. Int. 72, Pr. No. 72; 1946 Session: Ass. Int. 777, Pr. No. 801; Ass. Int. 288, Pr. Nos. 288, 760; 1945 Session: Ass. Int. 340, Pr. No. 341).

This State policy to leave private enterprise free to exercise its usual powers of management is further demonstrated by comparison of the Statute with the State Public Housing Law. The latter, enacted in 1939 shortly after the Constitutional Convention, (New York Consol. Laws, Ch. 44-A), implements the *low-rent housing* purpose of the Housing Article, and declares that the corporations created thereunder shall be agencies and instrumentalities of the State (section 2). By contrast, the Statute contains no such provision.

Furthermore, section 223 of the Public Housing Law states:

> "For all the purposes of this chapter, no person shall, because of race, color, creed or religion, be subjected to any discrimination."

Again, by contrast, the Statute contains no such provision.

The reason for these significant differences is obvious: The Public Housing Law applies to housing developments

by *public agencies;* the Statute applies to housing developments by *private enterprise.*

Thus, we have a well-defined constitutional and statutory policy. As Judge Bromley said in the opinion of the Court of Appeals (R. 245):

> "There is nothing in the Constitution or, as will be demonstrated hereinafter, in the statute exercising the power granted by the Constitution indicating that the State is to have any part in the operation of dwellings resulting from rehabilitation of sub-standard areas"

and (R. 249):

> "it is undisputed, therefore, that the legislative intent is clear to leave private enterprise free to select tenants of its own choice."

4. Negotiation of the Contract.

In the light of the policy established by the State, which had fixed the basic relations between government and private enterprise, the City proceeded over a period of months to negotiate the contract with Stuyvesant and Metropolitan. The contract was approved at a meeting of the City's Board of Estimate held June 3, 1943. At the hearing, City Commissioner Moses traced the steps which led up to the Stuyvesant project (R. 141-153). He described how, at the Constitutional Convention to which he had been a delegate, the problem of slum clearance

> "led to a considerable amount of debate as to who was going to do this work, what agency would do it, whether public or private or semi-public * * * the conclusion was reached by substantially all the people who made any dispassionate or detached study of

> the question that it went way beyond government enterprise" (R. 141-142).

Commissioner Moses emphasied that the problem could not be solved by public funds alone (R. 142), and that it had been the effort of the convention not only to provide for better housing through City and State loans and subsidies,

> "but also by private capital with some aids and inducements to get them into this slum clearance work" (R. 142-143).

He turned to a discussion of the specific steps taken by the City to enlist private enterprise. He told how, at the request of the Mayor, he got together the heads of leading insurance companies and talked about a specific area—"the whole of the lower east side of Manhattan" (R. 143). The proposition collapsed because the representatives of the companies

> "had to look ahead 25 or 30 years into a future that could not be seen clearly and it seemed to them to be full of all kinds of risks. One of the things that worried them was as to land. * * * That brought these companies face to face with the fact that they were paying in the case of many of these buildings an average of $6 or more a square foot, some as high as $7, paying for buildings all of which had to be destroyed and taken down" (R. 144).

He talked also of other problems that worried the insurance companies and then said:

> "The question was also raised as to whether as in the case of the other developments, their other investments, they would have control in the selection of tenants. That disturbed them also." (R. 145)

He pointed out that after the discussions only one company (not Metropolitan) showed any interest in going ahead, but thereafter even it withdrew (R. 145), and that following the adoption of the 1943 amendments to the Statute, the City initiated negotiations with Metropolitan and urged Metropolitan to proceed (R. 145).

Referring to the project itself, the Commissioner pointed out that:

> "There are no gifts of the City. The City is merely providing the minimum of inducements to get the only big company interested in this kind of thing to go into it. The City is going to collect in taxes substantially more than it is collecting today on the basis of present assessments, including assessments of old buildings, rotten buildings that are going to be torn down by the company. It is a good piece of business for the City of New York." (R. 151)

Replying to the objection that there was no restriction on the right of Stuyvesant to select tenants, Commissioner Moses said:

> "Now, the question has been raised, and I think it is very unfortunate, as to the selection of tenants. Neither the Constitutional Amendment that provides for housing, nor the Act in question nor the contract which is before this Board has any reference to that item, has no reference because this is a private development, subject to the same rules, the same, or rather subject to the same kind of control by the corporation which invests its funds that would apply in the case of any other private development. What the company is going to do about that, I do not know. It is their business. They have got to look ahead for 25 years and they have got to manage this prudently with a ceiling on rents and with all

> the other risks that go with the enterprise. If any other kind of rule is imposed, neither this company nor any other that has to look ahead for 25 years, or any other fiduciary, will go into this business." (R. 150)

At the same hearing, Mr. Ecker, Chairman of the Board of Directors of Metropolitan, told the Board of Estimate (R. 158-159):

> "In reference to the tenants that would come there, I cannot do more than to say that in that respect, and in all other respects in the management of this property, we are going to exercise our best judgment and make the enterprise successful."

In the following year (1944), the City Council, in adopting Section J 41-1.2 of the Administrative Code withholding tax exemption from any project which discriminates in the selection of tenants, expressly excepted any project "hitherto agreed upon or contracted for".

This exception, since it applied to Stuyvesant, is said in the dissenting opinion below (R. 264) to constitute state action "in a most direct way * * * 'in aid of' the discrimination being practiced." Clearly it was not that. It was, on the contrary, legislative recognition that the project was a purely private undertaking erected under the statute and pursuant to a contract with the City, and that retroactive legislation by the City, purporting to deprive Stuyvesant of tax exemption theretofore granted to it, would be an unconstitutional interference with vested rights and an impairment of the obligations of the pre-existing contract.

Such is the history of this project. During all of the negotiations the parties carried out the policy of the State

not to inject government participation into the management of the enterprise. The question of the selection of tenants was never the subject of negotiations, because, as Commissioner Moses said:

> "this is a private development, subject to the same rules, the same, or rather subject to the same kind of control by a corporation which invests its funds that would apply in the case of any other private development."

5. The Substance of the Contract.

Stuyvesant agreed to acquire the area, demolish the old buildings and construct Stuyvesant Town, all without expense to the City (R. 97-98, 113, 114), and Metropolitan agreed to advance the necessary funds to Stuyvesant (R. 104) and guaranteed performance by Stuyvesant of its obligations under the contract (R. 121). All the risks of the undertaking were assumed by Metropolitan and its wholly owned subsidiary, Stuyvesant.

The City agreed to condemn and thereby bring together under one good title the entire area irrespective of prior ownership—whether private or public (R. 92, par. 101(d); 96-97, par. 202; 97-99, par. 203). Obviously, in no other way could the first step toward rehabilitation have been taken. There could be no planned and comprehensive rehabilitation of a substantial area in divided ownership unless a means existed for acquiring all the real property in the area to be developed.

The City granted tax exemption not "on the improvements" as stated in the dissenting opinion below (R. 258, 264) but only upon the *enhanced* value of property in the area, after rehabilitation, over and above the assessed value of land and buildings therein before rehabilitation (R. 108-

110, par. 306). This limited tax exemption was to offset somewhat the extremely high acquisition, demolition and construction costs resulting from the project's location in the particular slum area. This helped induce the erection of the project by private capital, without which the rehabilitation would not have been accomplished.

The City's promises to condemn property for the project and to grant partial tax exemption were inducements which Metropolitan took into consideration in determining whether or not it would assume the risk of constructing a project in this area.

Condemnation and partial tax exemption are not only expressly authorized by the Statute (sections 20, 26), but the enactment of such statutory provisions is expressly authorized by the Housing Article of the Constitution, which provides that the Legislature may, in aid of rehabilitation,

> "grant or authorize *tax exemption* in whole or in part"

and

> "grant the power of *eminent domain to* any City".

Stuyvesant also agreed to pave, and convey to the City, bordering strips around the periphery of the project in exchange for land in former streets which the City agreed to close (R. 101-103, pars. 208-209). This enabled the redevelopment of the entire area under a plan suitable for the area.

The contract regulates rents at rates intended to yield Metropolitan the statutory limited return (R. 111, par. 307), prohibits the mortgaging of the project (R. 105, par. 303), and the sale of Metropolitan's investment (R.

113, par. 309); it gives the City certain auditing privileges (R. 117-119), pars. 502-506), and provides for the payment to the City upon dissolution of Stuyvesant of any earned cash surplus after payment of all indebtedness (R. 121, par. 603). These provisions conform to the policy of the Statute (sections 8, 16, 23) that, if tax exemption be proffered as part of the contract, the recipient shall not exploit the exemption for the purpose of obtaining an inordinate profit.

Pursuant to the Statute (section 20) and the contract (R. 120, par. 601), when tax exemption is terminated (either by expiration of the term, by prior payment of accrued taxes for which exemption was granted or by any other means), Stuyvesant may dissolve and convey its property to Metropolitan (section 24), and all provisions of the Statute then become inapplicable to the project. Likewise, all provisions of the contract, except those creating covenants running with the land (R. 115-116, par. 405), then terminate (R. 122, par. 702).

The Statute provides for general powers of supervision by an agency, which, if all the debentures of the redevelopment company are owned by an insurance company, is the Superintendent of Insurance. The Statute also provides, however, that if the parties are a municipality, a redevelopment company and an insurance company, the supervising agency shall have no continuing power of supervision once it shall have approved the contract. Such approval was given here, with the result, as the opinion below points out (R. 248):

> "the general power of visitation, examination and control provided for by § 21 is inapplicable to Stuyvesant."

6. Advantages to the City Under the Contract.

Substantial benefits accrue to the City under this contract. The most important is that sought by the Statute—the rehabilitation of the area. In addition, all delinquent taxes on property within the area were paid by Stuyvesant as an incident to the condemnation; a sound taxpayer for the entire area was substituted; and the City's credit was improved. A very valuable improvement has been added to the tax rolls of the City and, during the period of partial tax exemption, taxes will be paid on the full assessed valuation of land and former improvements as of the time of their acquisition for the project. At the end of the period of exemption this area will be fully taxed at a greatly enhanced value. A further benefit is the large and immediate increase in the value of property adjoining the area and the resulting increase of tax revenues.

These many benefits were realized by the City from rehabilitation—a useful public purpose.* It was to obtain

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*The over-all advantages to a city resulting from rehabilitation were stressed at the New York State Constitutional Convention in 1938 (N. Y. State Const. Conven., Rev. Record, Vol. II, pp. 1532-1533):

> "In the City of New York the tuberculosis death rate in 1932 for the entire city was 69 per hundred thousand of population. * * * In the lower east side, it was 118 per hundred thousand. And to dramatize it still more, the rate on Riverside Drive is only 43 per hundred thousand.
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> "The same may be said about infant mortality rates for the same year. The rate for the entire City of New York was 57 infant deaths per thousand live births. In the Navy Yard section of Brooklyn, however, it was 95; in Harlem it was 110."

A more recent report made by the City of Los Angeles Planning Commission, entitled "Comparison of Blighted and Good Areas in Los Angeles" (1945), reveals the cost of blight by the

these benefits, and for no other purpose, that the City exercised its power of condemnation and granted partial tax exemption. Metropolitan on its part made a sound investment in housing. In making that investment, it was willing to take the usual hazards of private enterprise. The City paid nothing in money for its benefits, but Metropolitan paid the full cost of the project—upwards of $90,000,000.

7. Decisions Involving the Statute and the Contract.

The constitutionality of the Statute and the legality of the contract were upheld in *Matter of Murray* v. *LaGuardia*, *supra* (291 N. Y. 320).

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following comparative revenues and expenditures for a typical blighted area and a typical non-blighted area in that city:

	Revenue (per capita per year)	Expenditure
Typical blighted area.....	$ 7.74	$17.22
Typical non-blighted area.....	14.73	13.63

The report sets out detailed figures respecting the frequency of incidences of police arrests, juvenile delinquency cases, communicable diseases, venereal diseases, and tuberculosis cases as between the two types of areas, and then concludes:

> "The final cost figures indicate very clearly that blighted areas are subsidized by the rest of the City. Yet they do not give the whole picture, even of municipal costs. Juvenile delinquency is seven times as prevalent in the blighted area. The need for tuberculosis care is eight times as frequent. In the course of our investigation, the various City Departments, especially Health and Police, emphasized that if their budgets were not so restricted they would be spending not twice but four or five times as much in the blighted area as in the good area. And indeed, if these conditions are not taken care of, either by increased Health and Police budgets or by correcting the conditions that breed crime and disease, the additional costs to the City will rapidly increase as blight spreads and becomes more acute."

On the private nature of the enterprise, the Court stated at pp. 329-330:

> "Nor do we find merit in the related argument that unconstitutionality results from the fact that in the present case the statute permits the City to exercise the power of eminent domain to accomplish a project, from which Metropolitan—a private corporation—may ultimately reap a profit. If, upon completion of the project the public good is enhanced it does not matter that private interests may be benefited."

The questions of whether rehabilitation was the public purpose of the Statute and whether that purpose would be accomplished by the completion of the project were fully briefed and argued by all parties in the *Murray* case, and in its opinion in that case the Court said (p. 330):

> "In the project here involved the tax exemption which may be granted to Stuyvesant will commence —as prescribed by both the statute (§ 26) and the proposed contract (par. 306)—'from the date on which the benefits of such exemption first become available and effective.' That date is fixed by the contract (par. 306) as follows: 'The date on which the benefits of such exemption shall first become available and effective shall be *the date of completion* of the project.' It is thus made clear that such tax exemption, which, as we have seen, is limited to the value of *improvements* made within the area, cannot occur until the project itself—the work of redevelopment and rehabilitation within the substandard area—has been completed and the public purpose for which the project was designed has been accomplished." (Italics by the Court.)

Thus, the Court determined that the public purpose is accomplished when the project itself is completed. That conclusion was reiterated in the opinion of the Court of Appeals below.

The Opinion of the Court of Appeals*

The Court of Appeals, reviewing all of the relevant constitutional and statutory provisions, determined that the policy of the State is concerned with two distinct and different purposes: (1) rehabilitation of substandard areas, and (2) erection and maintenance of low-cost housing. The Court found that rehabilitation is to be left to private enterprise, encouraged by the State, and that low-cost housing is to be a public function undertaken by public corporations. It also found that the State constitutional policy is not to restrict private enterprise in the operation of housing resulting from redevelopment projects (R. 245), *supra*, p. 11:

> "There is nothing in the Constitution or, as will be demonstrated hereinafter, in the statute exercising the power granted by the Constitution indicating that the State is to have any part in the operation of dwellings resulting from rehabilitation of substandard areas."

It held that the Housing Article (section 10)

> "* * * specifically negated any authorization to State or City to engage in any private business or

*The opinion of the Supreme Court dismissing the complaint is to be found at R. 61. This decision was unanimously affirmed by the five Justices of the Appellate Division, First Department (R. 230-231).

> enterprise in connection with the rehabilitation of substandard areas." (R. 254)

It stated that in passing the Redevelopment Companies Law the Legislature (R. 249)

> "deliberately and intentionally refrained from imposing any restrictions upon a redevelopment company in the choice of tenants. The law contains none. Attempts, repeatedly made in the Legislature since the law was enacted, to alter the policy of the statute in this respect have failed. (See, e.g. 1948 Sess. Assem. Int. 127 Pr. No. 127; Assem. Int. 217, Pr. No. 217; Assem. Int. 1270, Pr. 1294; 1947 Sess., Assem. Int. 35, Pr. No. 35; Assem. Int. 72, Pr. No. 72.) On the other hand, the Public Housing Law (§ 223), which is applicable to State-constructed, low cost housing projects, expressly prohibits discrimination. There is no claim that the Legislature refused by amendment to make similar provision in the Redevelopment Companies Law because it thought the statute already barred discrimination, and it is undisputed, therefore, that the legislative intent is clear to leave private enterprise free to select tenants of its own choice".

It reiterated that, as was decided in the *Murray* case, the public purpose is fulfilled by the rehabilitation of the substandard areas (R. 254).

The Court, after reviewing the cases decided by this Court, rejected as inconsistent therewith the contention that the rental policy involves "state action", especially since the activity here involved is not a governmental function, and no governmental power is exerted to aid in discrimination (R. 254):

> "All of the previous decisions, and others cited, might be distinguished in that they disclose the

exertion of governmental power directly to aid in discrimination or other deprivation of right, or the action of a private group in the exercise of a governmental function. Neither factor is present here, where the State has remained silent and has indicated that the public purpose has been fulfilled by the rehabilitation of a substandard area (*Matter of Murray* v. *LaGuardia*, 291 N. Y. 320, *supra*). This conclusion is reinforced by the constitutional provision, hereinbefore referred to, which specifically negated any authorization to State or city to engage in any private business or enterprise in connection with the rehabilitation of substandard areas (Art. XVIII, § 10)."

The Court decided that under the New York Constitution the opportunity to lease housing accommodations is not a civil right and that the Court's decision must rest upon the coordinate commands expressed in the equal protection clauses of the Federal and State Constitutions. It discussed the question of the method of the creation of, or the extension of, rights which might be said to be entitled to protection under the Fourteenth Amendment and stated that, with the high responsibility of the States, implicit in our Federal system, "political [as distinguished from judicial] processes must furnish the appropriate means for extension of those rights in areas wherein they have not been heretofore asserted" and that, in any case, the concept of "state action" should not be extended so as to embrace the private non-governmental function here challenged (R. 255).

The Court stressed that there had been an increasing and fruitful participation of government, State and Federal, in the economic life of the nation and that to characterize as "state action" the rental policy here challenged would

foreclose the state from cooperating with private enterprise because of the danger that this would make every facet of the particular private enterprise "state action" (R. 255-256):

> "To say that the aid accorded respondents is nevertheless subject to these requirements, on the ground that helpful cooperation between the State and the respondents transforms the activities of the latter into State action, comes perilously close to asserting that any State assistance to an organization which discriminates necessarily violates the Fourteenth Amendment. Tax exemption and power of eminent domain are freely given to many organizations which necessarily limit their benefits to a restricted group. It has not yet been held that the recipients are subject to the restraints of the Fourteenth Amendment.
>
> "The increasing and fruitful participation of government, both State and Federal, in the industrial and economic life of the nation—by subsidy and control analogous to that found in this case—suggests the grave and delicate problem in defining the scope of the constitutional inhibitions which would be posed if we were to characterize the rental policy of respondents as governmental action. To cite only a few examples: the merchant marine, air carriers and farmers all receive substantial economic aid from our Federal Government and are subject to varying degrees of control in the public interest. Yet it has never been suggested that those and similar groups are subject to the restraints upon governmental action embodied in the Fifth Amendment similar to the restrictions of the Fourteenth upon the States. * * *"

The Court, after reviewing all of the circumstances and considering the total background, concluded that the rela-

tion between the State and the respondents did not convert the management of Stuyvesant into a State function and that the State constitutional policy leaving the operation to private enterprise should be respected.

The Dissenting Opinion

The conclusion of the dissenting opinion—that Stuyvesant's rental policy should be subject to the restraints of the Fourteenth Amendment—disregarded the decision in the *Murray* case, reiterated in the majority opinion, that the public purpose contemplated had been accomplished by the rehabilitation of the area. It also disregarded the essentially private nature of housing, the fact that the Housing Article negates any authorization to the State or City to engage in the operation of this housing project, and the fact that it was the State's policy not to restrict private enterprise in the management of the project.

The all-encompassing theory of the minority, was that (R. 260):

> "As long as there is present the basic element, an exertion of governmental power in some form, as long as there is present something 'more' than purely private conduct (see *Shelley* v. *Kraemer*, 334 U. S. 1, 13, *supra*), the momentum of the principle carries it into areas once thought to be untouched by its direction."

And again (R. 262):

> "On the other hand, even the conduct of private individuals offends against the constitutional provision if it appears in an activity of public importance and if the State has accorded the transaction either

> the panoply of its authority or the weight of its power, interest and support."

We submit that the above quoted assumptions, upon which the minority opinion was based, are inconsistent with the principles laid down by the decisions of this Court. This is apparent from the very decisions which the minority cited as authority.

For example, as authority for the first above quotation the minority cited the case of *Shelley* v. *Kraemer*. As pointed out hereafter (pp. 33-34), this case involved the enforcement by State courts of restrictive covenants. The question which was then before this Court was whether this direct participation in aid of discrimination by the judicial power of the State constituted "state action". The Court decided that it did but, significantly, it also decided that such covenants are valid and that those who wish may legally make and perform them. In short, this type of selectivity is not unlawful; only affirmative intervention by the State to *enforce* it is prohibited.

As to the second above quoted assumption, the minority made no attempt to define "an activity of public importance", but (R. 261) it cited as an example the case of *Rice* v. *Elmore*, 165 F. 2d 387, in support thereof. The *Rice* case involved a governmental function, i.e., a public primary, which the Court stated had become "an integral part of the election machinery * * *" (165 F. 2d at p. 399). The Court in that case also said that political parties have become "in effect state institutions, governmental agencies through which sovereign power is exercised by the people" (Id. at p. 389). Thus, the meaning of the *Rice* case is that the restraints of the Fourteenth Amendment apply to governmental functions. Neither the *Rice* case nor any other

case involving racial discrimination cited by the minority suggests that such restraints apply to matters merely because they might be thought by some to have an undefined "public importance".

The phrase "high public interest" has been used by this Court in reference to organizations which are, in the language of Mr. Justice Cardozo in *Nixon* v. *Condon* (286 U. S. at p. 88), "organs of the state itself * * * repositories of official power * * * governmental instruments," but not as generally descriptive of the multitude of matters which, while they may be of material importance, are essentially private in their nature. By its misuse of this phrase the minority, in reality, distorts the basic theory of the decisions of this Court, for by so doing it seeks to apply constitutional restraints, applicable only to "official power" or "organs of the state", to a private matter on the sole justification that, although private, it fits into an undefined general category of "high public interest". As so interpreted this would cause these restraints to apply to large and undefined segments of private enterprise—a result in direct conflict with the rationale of this Court's decisions.

Elsewhere in its opinion the minority abandoned, or at least modified, the principles above announced, by recognizing that inducements extended by the State to private enterprise, even when involving a subsidy, do not necessarily require that the private activity be deemed "state action". Thus, the opinion stated (R. 263) that "to intimate that this is just another instance of a government subsidy is to misconceive the case"; it further stated (R. 259) that the "total background" must be considered in deciding whether the equal protection clauses of the Federal and State Constitutions apply. However, we submit, it is the dissenting opinion which fails to give effect to the "total

background"—the private nature of housing, the problem which faced the State, the objective sought to be accomplished, the Constitutional limitations upon participation in operation by the State, the legal and practical difficulties in accomplishing the objective, and the policies and means finally adopted by the State.

The dissenting opinion argued that the redevelopment plan, the contract and the local law "brought about precisely the same situation as if the city had zoned or leased a 'white' development" (R. 265). This argument disregards the fact that if the State "zones or leases a white development" there is direct State action effecting discrimination. The opinion, while disavowing any conclusion that the City "adopted an alternative stratagem to effect discrimination" (R. 265), at the same time quoted as authority for the argument the cases discussed at page 37 hereof, in which it was held that mere stratagem to effect discrimination was involved.

The dissenting opinion (R. 264) asserted that the City's adoption of Section J 41-1.2 of its Administrative Code subsequent to the making of the Stuyvesant contract constituted State action directly in aid of discrimination (see *supra*, p. 14). That section withheld tax exemption from any project which discriminated in the selection of tenants, but it excepted projects "heretofore agreed upon or contracted for". We submit that this conclusion of the dissenting opinion is erroneous; the City Council simply recognized that tax exemption had been granted to Stuyvesant by the pre-existing contract entered into with the City and that retroactive legislation to deprive Stuyvesant of this tax exemption would be invalid. Likewise the dissenting opinion (R. 264) asserted that the

authorization and approval by the Board of Estimate of the contract between Stuyvesant and the City constituted State action directly in aid of discrimination. Again, we submit that this conclusion is not soundly based. This contract was consistent with the established policy of the State, leaving the operation of the enterprise as a private—not a public—function. The City was under no obligation to attempt to control the selection of tenants by this private project. To conclude otherwise would lead to the imposition of restraints by Court decree upon many private activities merely because the State has had some contact with them.

The minority argued that the size of the project imbued it with a public nature. The size of the project, which is certainly a relative matter, arose out of the problem which had to be treated, and has no bearing on the question of the private rights here involved. At the time the Constitutional Convention adopted the Housing Article, the scope of the problem was well known.* It was contemplated that

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*The New York State Constitutional Convention recognized that a redevelopment project might have to be substantial but yet adopted the policy that rehabilitation other than by low rent housing shall be by private enterprise (N. Y. State Const. Conv. 1938, Rev. Rec., Vol. II, pp. 1533-1534):

> "To do this job right is to do it in a big way—not just an isolated low-rent housing project here or there. It means the staking out of entire slum neighborhoods which need to be razed to the ground, and replanned with some streets closed and others widened.
>
> * * *
>
> "The Federal government's part has been to make large but inadequate funds available. This has permitted isolated housing projects which are too small and too widely spaced to redeem the neighborhoods that need redemption."

projects of this nature would be erected for the purpose of solving the menace of slums. Under the mandate of the Housing Article the element of size could not convert the management and operation of the project into a public function.

The minority held that the circumstances of this case created an analogy to the case of *Marsh* v. *Alabama,* 326 U. S. 501 (1946). The *Marsh* case is irrelevant. The question in that case was simply whether a state, consistently with the First and Fourteenth Amendments, could impose criminal punishment on a Jehovah's Witness who, contrary to the wishes of the owner, undertook to distribute theological tracts on streets and sidewalks which though privately owned were publicly used. The case was concerned only with religious freedom in streets open to and actually used as streets by the public. The Court held that so long as streets are left open to general public use, the Jehovah's Witness violated no property right of the owner by going upon them and using them for the purpose of distributing religious literature. The case, however, did not suggest that the private company had no right to refuse to rent premises to the Jehovah's Witness, or to refuse him admission to the interior of its buildings. In this connection see *Watchtower Bible and Tract Society* v. *Metropolitan Life Insurance Company,* 297 N. Y. 339; cert. den. 335 U. S. 886 (1948), wherein the Court of Appeals distinguished the *Marsh* case and upheld Metropolitan's right to refuse uninvited Jehovah's Witnesses access to its Parkchester apartment house buildings for purposes of canvassing and distributing religious literature. The Court stated in substance that the reach of the Bill of Rights did not go so far as to proscribe Metropolitan's reasonable

exclusion of Jehovah's Witnesses from the *interior* of its multiple dwellings.

The minority opinion (R. 263) stated that section 2 of the Statute declares that the housing accommodations are "public uses and purposes". Instead, the purpose of the Statute is (section 2) "the rehabilitation of substandard and insanitary areas" in accordance with a plan (section 3, subd. 5) "to effectuate the purposes of article eighteen of the constitution * * *." This was held by the Court of Appeals in *Murray* v. *LaGuardia,* 291 N. Y. 320, and again in this case. These decisions of the highest Court of the State of New York relating to the construction of the Housing Article and the Statute are determinative of this subject.*

* * * * * *

We submit that the conclusion of the majority of the Court is sound. It recognizes the importance of enabling

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*Section 2 of the Statute refers to the "provision of adequate, safe, sanitary and properly planned housing accommodations in effectuation of official City plans". Section 14 provides that "the project or projects of any redevelopment company shall be designed and used primarily for housing purposes". Both provisions are simply descriptive of the nature of the development which the Legislature approved for accomplishing rehabilitation, *i. e.,* not commercial buildings, not factories, but residential buildings. Neither section 2 nor section 14 was intended to declare, and under the Constitution could not declare, that the management of a rehabilitation project is a public function (see *supra,* pp. 6-11).

The decisions of the Court of Appeals that rehabilitation was the public purpose and public benefit are also a complete answer to the argument of the petitioners (Petition pp. 13, 14, 16) that a "public benefit" contemplated by the Housing Article was the provision of "moderate rent housing", and that hence this housing must be offered to the public indiscriminately. Incidentally, neither the phrase "moderate rent housing" nor its equivalent appears in either the Constitutional or the Statutory provisions relating to rehabilitation.

the State to encourage private enterprise to assist in solving grave public problems such as the eradication of slum areas —problems which the State, because of limited resources or other reasons, has been unable to solve, and which private enterprise, if it is denied the usual powers and safeguards of management, will not undertake. On the other hand, if the view of the minority were adopted, the powers of the State would be seriously curtailed in dealing, with necessary flexibility, with the many intricate problems, including the rehabilitation of slum areas, raised by modern civilization.

Summary of Argument

Stuyvesant does not possess and is not exercising any governmental power. Under the Constitutional and Statutory policy of the State of New York as found by its Court of Appeals, Stuyvesant is engaged in a private—not a public—function, the operation of a privately financed and privately owned housing project.

The method adopted by the State of New York for accomplishing the public purpose of rehabilitation was to induce private enterprise to finance and construct projects such as Stuyvesant in blighted areas. The public purpose is achieved by the construction of the project. The steps here taken by the State and City to induce such an undertaking by private enterprise do not convert the operation of the private enterprise into a public activity.

The States should not be shackled in their attempts to enlist the aid of private resources in their accomplishment of desirable public ends, and thereby to deal progressively with problems of this nature.

ARGUMENT

THE RESTRAINTS OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT ARE DIRECTED AT THE EXERCISE OF GOVERNMENTAL POWER. STUYVESANT'S RENTAL POLICY IS NOT SUBJECT TO THESE RESTRAINTS SINCE STUYVESANT POSSESSES NO GOVERNMENTAL POWERS, IS PRIVATELY OWNED, AND HAS CONSTRUCTED AND IS ENGAGED IN OPERATING A PRIVATE PROJECT.

A. The equal protection clause of the Fourteenth Amendment imposes restraints upon the exercise of governmental power—not upon the exercise of private rights, and the decision of the New York Court is in accord with the relevant decisions of this Court.

The "equal protection" clause of the Fourteenth Amendment applies only to "state action" and not to merely private conduct. In *Shelley* v. *Kraemer,* 334 U. S. 1 (1948), this Court said, at p. 13:

> "Since the decision of this Court in the *Civil Rights Cases,* 109 U. S. 3 (1883), the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful."

Before action can be said to be "fairly . . . that of the States" and consequently illegal if discriminatory, it must appear that such action involved an exercise of governmental power. In *Ex Parte Virginia,* 100 U. S. 339 (1879), it was involved in the performance of official duties

in a discriminatory manner by a state official; in *Buchanan* v. *Warley,* 245 U. S. 60 (1917)—Petition, pp. 15, 19, 27—it lay in the adoption by a municipal corporation of a local ordinance which prohibited Negroes from living in white neighborhoods; and in *Shelley* v. *Kraemer* (*supra*)—Petition, pp. 11, 15, 28—it was present in the judicial enforcement by a state court of a restrictive covenant.

In the above cases, the prohibited state action was the discriminatory exercise of governmental power by an executive, administrative, legislative or judicial arm of the State itself. Similarly, in all cases in which activity of a private corporation or other private organization has been held to be "state action" subject to the restraints of the Fourteenth Amendment, the private corporation or other organization exercised some governmental power which had been directly conferred upon it, or which it possessed as an agency of the State.

In *Nixon* v. *Condon,* 286 U. S. 73 (1932), *supra,* p. 27—Petition, pp. 10, 15, 27—the adoption by the executive committee of the Democratic party of Texas (under the authority of a Texas statute) of a resolution which in effect excluded Negroes from membership in the party was held to be "state action". This Court held, in substance, that the holding of primary elections was as much a function of the State as the holding of general elections, and that therefore no person qualified by statute to vote in a general election could be deprived, by party action, of the right to vote in the party primaries. In considering the nature of the action of the party Executive Committee, Mr. Justice Cardozo said, at p. 88:

> "The pith of the matter is simply this, that when those agencies are invested with an authority inde-

pendent of the will of the association in whose name they undertake to speak, they become to that extent the organs of the State itself, the repositories of official power. . . . They are not acting in matters of merely private concern like the directors or agents of business corporations. They are acting in matters of high public interest, matters intimately connected with the capacity of government . . ."

In *Smith* v. *Allwright*, 321 U. S. 649 (1944)—Petition, pp. 15, 16—and in *Rice* v. *Elmore, supra*, p. 26, (165 F. 2d 387)—Petition, pp. 15, 18—the right to vote in primaries was again involved. In the latter case—which was stressed by the minority opinion below (R. 261)—the Court stated significantly that political parties had "with the passage of the years . . . become in effect State political parties through which sovereign power is exercised by the people" (165 F. 2d at p. 389).

In *Steele* v. *Louisville & Nashville R. R. Co.*, 323 U. S. 192 (1944)—Petition, pp. 15, 18—this Court held that the Railway Labor Act must be construed to require that a labor union acting as exclusive bargaining agent under the Act, for all the members of a craft, could not discriminate against certain Negroes who were members of the craft. In his opinion Chief Justice Stone emphasized that the Act conferred on the bargaining representative "power not unlike that of a legislature" (p. 198), and stated at pp. 202-203:

> "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, . . . but it has also imposed on the representative a corresponding duty. We hold that the language of the Act to

> which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative . . . the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them."

In the *Steele* case, not only was this Court dealing with an entirely different function—one similar to that of a legislature—but it was dealing with the construction of a Federal statute, whereas in this case we have a State Statute which has been construed by the highest Court of the State as indicating that the State is ***not***

> "to have any part in the operation of dwellings resulting from rehabilitation of sub-standard areas." (See *supra,* p. 21).

In *Kerr* v. *Enoch Pratt Free Library,* 149 F. 2d 212 (4th Cir., 1945), cert. denied 326 U. S. 721—Petition, pp. 11, 15, 16, 18—the determination by a board of trustees to exclude a Negress from a librarians' training class conducted in a city owned and controlled library was held to be "state action", but there, as the Court said (149 F. 2d at pp. 216-217):

> "The donor could have formed a private corporation under the general permissive statutes of Maryland with power both to own the property and to manage the business of the Library independent of the state. He chose instead to seek the aid of the state to found a *public institution* to be owned and supported by the city but to be operated by a self perpetuating board of trustees to safeguard it from political manipulation; and this was accomplished by special act of the legislature with the result that the

> powers and obligations of the city and the trustees were not conferred by Mr. Pratt but by the state at the very inception of the enterprise." (Italics supplied.)

At p. 215, the Court pointed out that the library was "completely owned and supported from its inception by the state." Obviously, the trustees' exercise of "powers . . . conferred . . . by the state" with respect to a library "completely owned and supported by the state" was an exercise of public power. By contrast with the *Kerr* case, Stuyvesant is not the recipient of one cent of public funds. None of its property is publicly owned. Its officers and employees are not appointed by public authority and have no public status. It has neither purported to act, nor has it acted, as an agency of the State. Its chief interest is to invest its private capital in housing. All risk of loss from vacancies, fire and other hazards must be borne by it, and not by the City or the State. In all these respects, it is completely unlike the "public institution" considered in the *Kerr* case.

In *Connecticut College for Women* v. *Calvert,* 87 Conn. 421, 88 Atl. 633 (1913) and *University of So. California* v. *Robbins,* 37 P. 2d 163 (Cal. App. 1934)—Petition, p. 22—the colleges had been granted the governmental power of eminent domain to be exercised by them for their own benefit and for a continuing public purpose (see *infra,* pp. 45-46). Stuyvesant has no such power.

Lawrence v. *Hancock,* 76 F. Supp. 1004, (S. D. W. Va. 1948); *Culver* v. *City of Warren,* 83 N. E. 2d 82 (Ohio App. 1948), and *Kern* v. *City Commissioners of Newton,* 151 Kan. 565 (1940), relied on by petitioners (Petition, p. 18), involved the right of Negroes to use swimming pools constructed by municipalities with public funds, and

then purportedly leased by the municipalities to private operators. All three were decided on the same ground, *i.e.*, that the swimming pool, having been constructed with public funds, was public property; that the lease was merely a "colorable" arrangement, not made in good faith, whereby the lessee operated the pool as a "mere agent or instrumentality" of the city, and that the city could not evade its obligations by resorting to such a "stratagem". Even the minority opinion below concedes that no such situation is involved here (R. 265).

The case of *Marsh* v. *Alabama*, 326 U. S. 501 (1946) —Petition, pp. 10, 11, 15, 17—is not applicable (see *supra*, p. 30).

From the above cases, it is apparent that the restraints imposed upon States by the Fourteenth Amendment do not apply to a private corporation, except in cases in which such corporation exercises a governmental power or acts as an agency of the State. In such case, a reason exists for imposing on the corporation a duty similar to that imposed upon the State itself. If a governmental power is not so exercised or possessed, no basis exists for imposing such a duty.

In the present case, Stuyvesant did not receive and is not exercising any governmental power. It is financed, owned and operated as a private enterprise and is not acting as an agent of the State or City. As we have seen, Stuyvesant has only those powers possessed by every private corporation organized under the General Corporation Law (Statute, section 7).

As recognized by the Court of Appeals below (R. 241-256), a private enterprise, such as Stuyvesant, engaged in the business of owning and leasing apartments in the State of New York, possesses the right to select tenants of its

choice. See also *Pratt* v. *La Guardia, supra* (182 Misc. 462).

B. Arrangements, such as the one at bar, are an historical method by which the States have accomplished desirable public ends without interfering with the rights of private enterprise. The steps taken under the constitutional and statutory policy of the State to induce this private activity do not make the rental policy of the project resulting from rehabilitation "state action".

The offering of inducements by government to encourage a private activity by private capital has been a method often used to accomplish desirable public purposes. Throughout the history of this Nation, State power has often been employed to extend inducements to private capital as a result of which a variety of public ends have been accomplished.*

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*Several outstanding examples of this practice have been considered by this Court. In *Gordon* v. *The Appeal Tax Court*, 3 How. 133 (1845) tax benefits were extended to certain Maryland banks by the legislature of that state, in order to induce those banks to finance and operate a portion of the Cumberland Turnpike. In *The Piqua Branch of the State Bank of Ohio* v. *Knoop*, 57 U. S. 369 (1853), the Ohio legislature granted special treatment respecting taxes to privately owned state banks in order to induce private capital to establish a sound banking system in that state. In *United States* v. *Baltimore & Ohio R.R. Co.*, 84 U. S. 322 (1873), the Maryland legislature authorized the City of Baltimore to issue city bonds and advance the proceeds for the purpose of aiding the construction of the Baltimore & Ohio Railroad. See also *Hermitage* v. *Goldfogle*, 204 App. Div. 710 (1st Dept. 1923), aff'd. 236 N. Y. 554 (1923), where municipalities were authorized to exempt from taxation new buildings erected exclusively for dwelling purposes. Cf. *Everson* v. *Board of Education*, 330 U. S. 1 (1947), where this Court stated at p. 7 "subsidies and loans to individuals such as farmers and home owners, and to privately owned transportation systems, as well as many other kinds of businesses, have been commonplace practices in our state and national history."

The object aided by the exercise of State powers in this case was one of State concern having to do with the internal affairs and resources of the State.* In dealing with its problem of slum rehabilitation the State of New York selected a traditional method of accomplishing a public purpose. The steps, which below will be considered individually, were as a whole designed to carry out the policy established by the State—rehabilitation—the desired public end. Whether considered individually or whether considered together, they do not affect the private nature of the operation of the project.

1. Partial tax exemption.

As a matter of law, the grant of partial tax exemption does not constitute a delegation or release of any sovereign power or authority to Stuyvesant. In *The Piqua Branch*

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*This Court has always respected the determination of the state legislatures in their dealing with matters of local concern and especially in their determination as to what conditions and methods are advisable in order to serve the public interest. *Slaughter House Cases,* 83 U. S. 394, 404 (1873); *Davidson* v. *Board of Administrators of New Orleans,* 96 U. S. 97 (1878); *Barbier* v. *Connolly,* 113 U. S. 27 (1885); *Fallbrook Irrigation District* v. *Bradley,* 164 U. S. 112 (1896). See also the dissents of Mr. Justice Holmes in *Lochner* v. *New York,* 198 U. S. 45, 75-76 (1905); *Tyson & Bro.* v. *Banton,* 273 U. S. 418, 445-446 (1927); *Baldwin* v. *Missouri,* 281 U. S. 586, 595 (1930).

That these determinations by the various state legislatures should not be negated by the courts unless they clearly invade "cherished rights", has received an increased recognition in recent decisions of this Court. See *Bute* v. *Illinois,* 333 U. S. 640 (1948); and *American Federation of Labor* v. *American Sash and Door Co.,* 335 U. S. 538 (1949).

This principle applicable to enactments of state legislatures is, *a fortiori,* applicable when dealing with the solemn declaration of the people of a state by Constitutional amendment. *Green* v. *Frazier,* 253 U. S. 233 (1920).

of the State Bank of Ohio v. *Knoop,* 16 How. 369, 57 U. S. 369 (1853), it was said at p. 384:

> "The assumption that a State, in exempting certain property from taxation, relinquishes a part of its sovereign power, is unfounded. The taxing power may select its objects of taxation; and this is generally regulated by the amount necessary to answer the purposes of the State. Now the exemption of property from taxation is a question of policy and not of power."

The Housing Article of the Constitution, which authorizes the tax exemption, makes it clear that the exemption is not a subsidy: in the very breath in which it authorizes tax exemption for redevelopment projects, it prohibits state "loans or subsidies" to any but a low rent housing project (section 6). As stated by the Court of Appeals in *People ex rel 1170 Fifth Avenue Corporation* v. *Goldfogle,* 254 N. Y. 476 (1930), at p. 478:

> "By failing to assess a certain class of property the city does not give its money or property or loan its money or credit to or in aid of individuals, associations or corporations. It neither gives nor loans anything."

Petitioners' argument that the residents of New York City must bear a burden in connection with the tax exemption is fictional. In the first place, it is contrary to the finding of the Board of Estimate, which approved the contract because it determined that the contract was "in the best interests of The City of New York" (R. 86), *i.e.,* it was to bring about rehabilitation of a slum area and prevent its further drain upon the credit of the municipality and the health of the people. Secondly, in agreeing to such

exemption the City merely gave up something it did not have and would not have unless the project were built—the right to tax for twenty-five years the *increase* in the value of the area due to the construction of the project. Upon termination of the exemption, the full assessed value of the project, which will certainly exceed substantially the assessed value of the area at the time of acquisition, will be subject to full taxes. Obviously, a tax exemption limited to an *increase* in property values resulting from erection of improvements sought by the City to arrest the decline in property values in a slum area does not require "increased taxes levied upon the rest of the City"—Petition, p. 12.*

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*Petitioners apparently ignore the over-all advantages to a city from rehabilitation which were stressed at the New York State Constitutional Convention in 1938. In addition to the comments set out in the footnote on page 18, *supra*, we quote from the Revised Record, Volume II of the New York State Constitutional Convention at p. 1533:

> "They [the slums] add inexcusably to the cost of government by increasing the cost of crime prevention and punishment.
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> "In that connection, let me interrupt this long enough to say that one-third of the convicted felons, convicted in the Court of General Sessions and in Kings County, were brought up, were bred in the slum areas of Manhattan.
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> "They add inexcusably to the cost of fire protection and of health service and hospitalization. Slums destroy property values upon which government depends for its revenues. * * *
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> "All these additional costs in dollars, to say nothing of the cost in misery and in physical and moral sickness, are the concealed subsidy we pay today for the luxury of having slums. That concealed subsidy which we pay for the continuance of slums is immeasurably greater than any direct subsidy needed for their elimination."

On the contrary, the project will not only greatly reduce the tax burden on the rest of the City when the tax exemption terminates, but it has reduced, and will continue to reduce, the tax burden on the rest of the City, even during the period of partial tax exemption. This results from two circumstances. First, as a slum area, a large amount of the taxes assessed had been uncollectible and remained in arrears. On taking over the area, Stuyvesant agreed to, and did, pay all these arrears (R. 92-93). Second, if the area had not been rehabilitated, it would have become progressively worse and each year would see a greater and greater percentage of the assessed taxes falling into arrears and remaining uncollectible. Stuyvesant, a solvent landlord, has agreed to, and each year will, pay the full tax on the entire assessed value of the area as of the time of the taking. The very purpose of the limited exemption was to remedy an existing tax burden caused by the costly upkeep of the area, and thereby to avoid a further drain upon the municipality's credit (see footnote, *supra,* p. 18). As Commissioner Moses said (R. 151) there are "no gifts of the City . . . The City is going to collect in taxes substantially more than it is collecting today . . . It is a good piece of business for the City of New York".

Tax exemption has been frequently used by government to encourage private activity which is deemed desirable for the public good. Under section 4 of the New York Tax Law (McKinney's Consol. Laws of New York, ch. 60), exemption is granted to a variety of private organizations. Under Laws, 1920, ch. 949, and again under Laws 1936, ch. 474, and Laws 1946, ch. 321, cities were authorized to exempt from local taxes any increase in the assessed valu-

ation of buildings resulting from alterations and improvements.* In 1938 the City of New York granted partial tax exemption to the extent of any increase in assessed valuation of existing buildings resulting from alterations and improvements. (Administrative Code, City of New York, section J 41-2.0 [1937].) It has never been assumed —as petitioners infer (Petition, p. 22)—that

> "in the past when the cooperation existed, a prohibition against racial discrimination was taken for granted."

On the contrary, no one has ever doubted that owners who benefited from the foregoing laws retained the right to select tenants of their own choice.

The offering of inducements by government to private enterprise in furtherance of a public purpose has never been held to make the recipient subject to the limitations applicable to "state action". In *Everson* v. *Board of Education,* 330 U. S. 1 (1947), where it was claimed that an actual appropriation—which was in no way involved here—

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*In *Hermitage Company* v. *Goldfogle,* 204 App. Div. 710 (1st Dept. 1923), aff'd. 236 N. Y. 554 (1923), the Court in upholding the constitutionality of the tax exemption authorized by New York Laws 1920, ch. 949, said at pp. 726-727:

> "This was not a case of an arbitrary classification of existent buildings into separate groups, some of which were taxable, and some of which were not. It was an exemption from future local taxation, for a limited period, of property which was to be created in return for that concession. It was not a bonus for something which the owner was bound to do, for he was under no obligation to build, nor could he be reasonably expected so to do, in view of the high cost of building operations. It was a bargain between the State and the owner of vacant property, by which each gained something and no one was the loser."

of public money to pay fares of children in transporting them to parochial schools was a violation of the Fourteenth Amendment, this Court said (p. 7):

> "Nor does it follow that a law has a private rather than a public purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program. See Carmichael v. Southern Coal & Coke Co., 301 U. S. 495, 518. Subsidies and loans to individuals such as farmers and homeowners, and to privately owned transportation systems, as well as many other kinds of businesses, have been commonplace practices in our state and national history."

2. Condemnation of property by the City.

Stuyvesant cannot condemn land; the Statute confers that power upon the City alone, and the City may exercise it only for the accomplishment of the rehabilitation purpose. The power was exercised for the benefit of the City—"to bring about the clearance and rehabilitation of substandard areas as a means to protect public health and morals and to restore and preserve the financial stability" of the City. *Murray* v. *La Guardia,* 291 N. Y. at p. 331.

That the operation and management of the completed project is by private enterprise is immaterial. As the Court said in the *Murray* case (pp. 329, 330):

> "If, upon completion of the project the public good is enhanced it does not matter that private interests may be benefited."

Petitioners rely (Petition, p. 22) on *Connecticut College for Women* v. *Calvert,* 87 Conn. 421, 88 A. 633 (1913),

and *University of So. California* v. *Robbins,* 37 P. 2d 163 (Cal. App. 1934). In both, the Legislatures granted to educational institutions the power to condemn property for a continuing public purpose—education. These cases differ radically from the case at bar. Stuyvesant was given no such power directly or indirectly. The Housing Article and the Statute grant the power to the City alone, and it was exercised by the City and for the benefit of the City. The accomplishment of its rehabilitation purpose in and of itself was the public benefit. The possibility of an incidental benefit to private enterprise resulting from the accomplishment of the public purpose does not subject the enterprise to the restraints of the Fourteenth Amendment.

3. The closing of streets and exchange of property.

The closing of the former streets in the area, and the conveyance of the land on which these former streets existed, were, like condemnation, merely part of the mechanics which made the rehabilitation possible.

Petitioners' contention that "the net gain to respondents by this aspect of the contract was more than 500,000 square feet, or nearly 19% of the 2,600,000 square feet of the site area" (Petition, pp. 6-7) is entirely misleading. As Commissioner Moses said at the hearing before the Board of Estimate, when it adopted the resolution authorizing the execution of the contract (R. 151):

> "A lot of nonsense has been talked about the exchange of streets. The fact of the matter is that under any conceivably honest system of calculation the land which the City is dedicating in the form of streets within the development has less value than the land which the company is dedicating for the widening of streets on the periphery."

Moreover, petitioners' assertions are inaccurate in referring to "streets" (Petition, pp. 12-13). The former streets in the area had been duly closed and discontinued by the City by formal street closing proceedings pursuant to the City Charter, and had ceased to exist as streets before the area was transferred to Stuyvesant.

Furthermore, the transfers of land in former streets, referred to in paragraphs 208 and 209 of the contract, involved more than a transfer of land for land. Paragraph 208 declares that the City shall convey title to the land in the closed streets to Stuyvesant in exchange for lands to be received by the City and for

> "other valuable considerations received by the City under this contract . . ."

These other considerations are set out in detail in paragraphs 208 to 211, inclusive, of the contract (R. 101-103), and it is clear from a reading of these paragraphs that the additional undertakings by Stuyvesant did constitute "valuable considerations".

Although ample consideration was in fact given, it should be noted that adequacy of consideration is not here at issue. The adequacy of the consideration moving to the City was determined by the Board of Estimate.

4. Standards and rules contained in the Statute to be observed by a redevelopment company.

Petitioners argue (Petition, p. 13) that "public control" of the project is evidenced by the fact that sections 5 and 15 of the Statute establish a "supervising agency", and that section 15 requires approval of the City to any modification of the contract. These regulations contained in the Statute do not constitute control of, or participation

in, the operation of the project by the State. Even the limited powers of the Superintendent of Insurance, the "supervising agency", terminated pursuant to section 15 of the Statute as soon as he approved the contract between the City and Stuyvesant, and as the opinion below points out (R. 248):

> "the general power of visitation, examination and control provided for by section 21 is inapplicable to Stuyvesant."

Other provisions of the Statute which petitioners contend (Petition, pp. 6, 13) subject Stuyvesant to "public control" are those which, during the period of tax exemption, limit the return on the investment (section 8), restrict rentals (section 15) and restrict the power of sale of the project (section 23). None of these provisions has any relation to the management and operation of the housing project after it is erected. That is conclusively shown by the fact that under the Statute (sections 24 and 26) the owner of the project is free to lift the restrictions at any time by paying up the accrued taxes and dissolving the redevelopment company. If such restrictions were inherent in the operation of the project, their continuance would be measured by its life, and not by the period of tax exemption.

These provisions are in effect standards and rules, consistent only with private operation, which the Legislature directed should be followed by municipalities in extending inducements to private enterprise. The Legislature desired to make sure that if a company received tax exemption it should not make an unfair profit as a result of such exemption. Limiting the return on investment and restricting rentals to rates designed to yield that return were

in accord with this policy. The provisions applicable during the period of partial tax exemption, which limit the right of sale, mortgage and modification of the project are in accordance with that same policy. The contract provisions relating to reports to the City Comptroller and the right to audit accounts were mere routine procedures designed to carry out such statutory policy and do not in any way go beyond it. Not one of these provisions has any relation to the operation of the project.

These standards or rules and the provisions for their termination show, not that the enterprise is public, but, on the contrary, that it was the intent of the Statute that the project be operated as a private enterprise. This is an entirely different situation from one in which the State finances an undertaking with public funds and participates in and controls its operation, as was the fact in the *Kerr* case (*supra*, p. 36). The petitioners (Petition, p. 16) confuse the two situations.

Many enterprises are subject to government regulations, which go far beyond the standards and rules applicable to Stuyvesant, but are nevertheless purely private. Mention may be made of the regulation of banks, insurance companies, savings and loan associations, investment companies, theatres, race tracks, pawn brokers, and others.

Any private owner of property is subject to numerous regulations. These include rent controls, licenses for construction, zoning restrictions, limitations on the height and kind of buildings, and numerous other restrictions. Clearly, regulation of a private enterprise by the State does not convert that enterprise into a public enterprise, or make the State a partner in the undertaking (cf. *Buckstaff Bath House Company* v. *McKinley*, 308 U. S. 358 (1939);

Madden v. *Queens County Jockey Club*, 296 N. Y. 249 (1947).

Petitioners, nevertheless, argue (Petition, pp. 13-14) that the City was given power to impose a restriction in the contract on the right of Stuyvesant to select tenants because, they say, "Section 15 of the Act provides that the contract may include not only regulations upon rents but also such provisions as may be 'necessary or desirable' for the 'operation and supervision of the project.'" All that section 15 provides is that the agreement "may contain such other provisions" with respect to these matters as are "not inconsistent" with the Statute. In other words, whether or not the contract should contain "such other provisions" and, if so, what they should be, is not a matter of statutory requirement; it is solely a matter of agreement between the City and the redevelopment corporation. Under the arrangement which was, in fact, reached, and which was approved by the Superintendent of Insurance, the operation of Stuyvesant Town is exclusively Stuyvesant's function.

Petitioners, in attempting to show that the restrictions confer on Stuyvesant a "public" character, lay hold of certain references to the word "public" in the Statute (Petition, p. 14). The difficulty with the argument lies in the fallacy of the premise. The Statute nowhere describes the "project" as a "public" project. Nor does it refer to a redevelopment company as a "public corporation" or as an agency or instrumentality of the State. Nowhere does it indicate that the "operation" of the project is a public use and purpose.

Section 2 of the Statute employs the phrases "public facilities", "public interest", and "public uses and pur-

poses"; sections 4 and 13 refer to "public purposes"; and section 15 (2) uses the words "public facilities". Mere reading of these words in their context, however, reveals that in no instance do they refer to the redevelopment company or its operation as public. Thus, "public facilities" refers to facilities, extraneous to the project itself, to be used by the public; "public interest" relates to the benefit to accrue to the public from the clearance of substandard and insanitary areas, and "public uses and purposes" relates to the public purpose of rehabilitation, as justifying condemnation of private property by the City to accomplish that public purpose.

Further, that a fundamental premise of the Statute was that private rights in managing the privately owned housing should remain unimpaired is established by the fact that an insurance company today may undertake such projects directly. It is no longer even necessary for an insurance company to form a redevelopment company for this purpose (New York, L. 1947, ch. 840).

The petitioners' fallacy lies in their refusal to acknowledge the fact that the steps taken by the State and the City were taken to induce private capital to locate private housing projects in areas where the new buildings would displace slums, and that the State Constitution expressly authorizes the Legislature to adopt this "means" of accomplishing the public purpose, leaving the rights of management in the hands of private enterprise. It is clear from this review of the steps taken that each individually was, and all as an entirety were, directed to the accomplishment of the desired public end of rehabilitation. They conform with the policy established by the State to accomplish that purpose by inducing private resources to engage in a private activity.

CONCLUSION

Historically, the construction and operation of housing has been an activity of private enterprise— and not a public activity—unless the State has taken action to make it public. The State has taken no such action here; on the contrary it decided that its relationship to such undertakings as that here involved would be limited to offering inducements to private enterprise and that the financing and operation of such projects would remain a private activity in which the State would not participate.

The absence of an intent on the part of the State to convert the activity to a public activity is apparent from the history of the Housing Article and the Statute. Prior legislative attempts to deal with the problem made clear to the Constitutional Convention that there must be two distinct purposes: (1) public housing, which was to be low cost housing, a State function; and (2) the use of private capital in the rehabilitation of slum areas, a private function. The Housing Article, therefore, provided for these two purposes, and the distinction between them was recognized in *Murray* v. *LaGuardia, supra,* and in the opinion of the Court of Appeals in this case.

The Statute implemented the provisions of the Housing Article. It adhered to the policy of the Article, treated the activity as a private activity, and made no attempt to invade the field of management of the project resulting from rehabilitation. The contract with the City adhered to that same policy established by the People and the Legislature of the State.

In its broader implications, the issue is whether the State is to be so circumscribed that it cannot, in order to accomplish desirable public purposes, deal flexibly and prog-

ressively with the many intricate problems raised by modern day civilization without converting activities, normally private, to the status of governmental functions.

Under our Federal System the States, in their possession of all power not delegated to the Federal Government, have the primary responsibility and duty of legislating for the public welfare in matters of State concern. This often necessitates experimentation—determination by trial and error. In our case the policy arrived at by the State was anything but precipitant or arbitrary. It was made after years of experiment and was finally incorporated in the State Constitution by the people themselves. It was a considered determination to persuade private enterprise to engage in an activity from which a public good would result. It defined the field in which the State would exercise powers and the field in which private enterprise would operate without State participation. It did not result in the violation of any basic historical right of the petitioners. On the contrary, the petitioners seek to invade a basic right which all parties agree Stuyvesant would normally possess —the right to manage and control its own property. A decision negating this constitutional and statutory policy, under which that basic right was left undisturbed, would conflict with the constitutional basis of our dual system of government and with a long line of decisions by this Court. If the restraints of the Fourteenth Amendment are extended to a private activity, which the State has encouraged in order that a highly desirable purpose shall be served, the States will be shackled in their attempts to accomplish desirable public ends.

The majority opinion is soundly based and reaches the correct result. It carries out the State policy. It leaves the rights of the enterprise which finances and operates the

project where the State left them. It permits the State freedom to reach decisions respecting desirable public ends and, within the limits of responsible action, to adopt established, progressive methods for accomplishing those ends.

We submit that the renting policy of Stuyvesant is not subject to the restraints of the Fourteenth Amendment, that the judgment of the Court of Appeals is correct, and that the petition should be denied.

Respectfully submitted,

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November 15, 1949.

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CLERK

Supreme Court of the United States

OCTOBER TERM, 1949

No. 402

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,

Petitioners,

v.

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY,

Respondents.

APPENDIX

TO BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

THE HOUSING ARTICLE OF THE NEW YORK STATE CONSTITUTION (Article XVIII).

Section 1. [Housing for persons of low income; slum clearance.]

Subject to the provisions of this article, the legislature may provide in such manner, by such means and upon such terms and conditions as it may prescribe for low rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto.

§ 2. [Idem; powers of legislature in aid of.]

For and in aid of such purposes, notwithstanding any provision in any other article of this constitution, but subject to the limitations contained in this article, the legislature may: make or contract to make or authorize to be made or contracted capital or periodic subsidies by the state to any city, town, village, or public corporation, payable only with moneys appropriated therefor from the general fund of the state; authorize any city, town or village to make or contract to make such subsidies to any public corporation, payable only with moneys locally appropriated therefor from the general or other fund available for current expenses of such municipality; authorize the contracting of indebtedness for the purpose of providing moneys out of which it may make or contract to make or authorize to be made or contracted loans by the state to any city, town, village or public corporation; authorize any city, town or village to make or contract to make loans to any public corporation; authorize any city, town or village to guarantee the principal of and interest on, or only the interest on, indebtedness contracted by a public corporation; authorize and provide for loans by the state and authorize loans by any city, town or village to or in aid of corpora-

tions regulated by law as to rents, profits, dividends and disposition of their property or franchises and engaged in providing housing facilities; authorize any city, town or village to make loans to the owners of existing multiple dwellings for the rehabilitation and improvement thereof for occupancy by persons of low income as defined by law; grant or authorize tax exemptions in whole or in part, except that no such exemption may be granted or authorized for a period of more than sixty years; authorize cooperation with and the acceptance of aid from the United States; grant the power of eminent domain to any city, town or village, to any public corporation and to any corporation regulated by law as to rents, profits, dividends and disposition of its property or franchises and engaged in providing housing facilities.

As used in this article, the term "public corporation" shall mean any corporate governmental agency (except a county or municipal corporation) organized pursuant to law to accomplish any or all of the purposes specified in this article.

§ 3. [Article VII to apply to state debts under this article, with certain exceptions; capital and periodic subsidies.]

The provisions of article VII, not inconsistent with this article, relating to debts of the state shall apply to all debts contracted by the state for the purpose of providing moneys out of which to make loans pursuant to this article, except (a) that any law or laws authorizing the contracting of such debt, not exceeding in the aggregate three hundred million dollars, shall take effect without submission to the people, and the contracting of a greater amount of debt may not be authorized prior to January first, nineteen hundred forty-two; (b) that any such debt and each portion thereof shall be paid in equal annual installments, the first of which shall be payable not more than three years, and the last of which shall be payable not more than

fifty years, after such debt or portion thereof shall have been contracted; and (c) that any law authorizing the contracting of such debt may be submitted to the people at a general election, whether or not any other law or bill shall be submitted to be voted for or against at such election.

Any law authorizing the making of contracts for capital or periodic subsidies to be paid with moneys currently appropriated from the general fund of the state shall take effect without submission to the people, and the amount to be paid under such contracts shall not be included in ascertaining the amount of indebtedness which may be contracted by the state under this article; provided, however, (a) that such periodic subsidies shall not be paid for a period longer than the life of the projects assisted thereby, but in any event for not more than sixty years; (b) that no contracts for periodic subsidies shall be entered into in any one year requiring payments aggregating more than one million dollars in any one year; and (c) that there shall not be outstanding at any one time contracts for periodic subsidies requiring payments exceeding an aggregate of five million dollars in any one year, unless a law authorizing contracts in excess of such amounts shall have been submitted to and approved by the people at a general election.

§ 4. [Powers of cities, towns and villages to contract indebtedness in aid of low rent housing and slum clearance projects; restrictions thereon.]

To effectuate any of the purposes of this article, the legislature may authorize any city, town or village to contract indebtedness to an amount which shall not exceed two per centum of the average assessed valuation of the real estate of such city, town or village subject to taxation, as determined by the last completed assessment roll and the four preceding assessment rolls of such city, town or village, for city, town or village taxes prior to the contracting of such indebtedness. In ascertaining the power

of a city to contract indebtedness pursuant to this article there may be excluded any such indebtedness if the project or projects aided by guarantees representing such indebtedness or by loans for which such indebtedness was contracted shall have yielded during the preceding year net revenue to be determined annually by deducting from the gross revenues, including periodic subsidies therefor, received from such project or projects, all costs of operation, maintenance, repairs and replacements, and the interest on such indebtedness and the amounts required in such year for the payment of such indebtedness; provided that in the case of guarantees such interest and such amounts shall have been paid, and in the case of loans an amount equal to such interest and such amounts shall have been paid to such city. The legislature shall prescribe the method by which the amount of any such indebtedness to be excluded shall be determined, and no such indebtedness shall be excluded except in accordance with such determination. The legislature may confer appropriate jurisdiction on the appellate division of the supreme court in the judicial departments in which such cities are located for the purpose of determining the amount of any such indebtedness to be so excluded.

The liability of a city, town or village on account of any contract for capital or periodic subsidies to be paid subsequent to the then current year shall, for the purpose of ascertaining the power of such city, town or village to contract indebtedness, be deemed indebtedness in the amount of the commuted value of the total of such capital or periodic subsidies remaining unpaid, calculated on the basis of an annual interest rate of four per centum. Such periodic subsidies shall not be contracted for a period longer than the life of the projects assisted thereby, and in no event for more than sixty years. Indebtedness contracted pursuant to this article shall be excluded in ascertaining the power of a city otherwise to create indebtedness under any other section of this constitution. Notwithstanding

the foregoing the legislature shall not authorize any city to contract indebtedness hereunder in excess of the limitations prescribed by any other article of this constitution unless at the same time it shall by law require such city to levy annually a tax or taxes other than an ad valorem tax on real estate to an extent sufficient to provide for the payment of the principal of and interest on any such indebtedness. Nothing herein contained, however, shall be construed to prevent such city from pledging its faith and credit for the payment of such principal and interest nor shall any such law prevent recourse to an ad valorem tax on real estate to the extent that revenue derived from such other tax or taxes in any year, together with revenues from the project or projects aided by the proceeds of such indebtedness, shall become insufficient to provide fully for payment of such principal and interest in that year.

§ 5. [Liability for certain loans made by the state to certain public corporations.]

Any city, town or village shall be liable for the repayment of any loans and interest thereon made by the state to any public corporation, acting as an instrumentality of such city, town or village. Such liability of a city shall be excluded in ascertaining the power of such city to become indebted pursuant to the provisions of this article, except that in the event of a default in payment under the terms of any such loan, the unpaid balance thereof shall be included in ascertaining the power of such city to become so indebted. No subsidy, in addition to any capital or periodic subsidy originally contracted for in aid of any project or projects authorized under this article, shall be paid by the state to a city, town, village or public corporation, acting as an instrumentality thereof, for the purpose of enabling such city, town, village or corporation to remedy an actual default or avoid an impending default in the payment of principal or interest on a loan which has been theretofore made by the state to such city, town, village or corporation pursuant to this article.

§ 6. [Loans and subsidies; restrictions on and preference in occupancy of projects.]

No loan or subsidy shall be made by the state to aid any project unless such project is in conformity with a plan or undertaking for the clearance, replanning and reconstruction or rehabilitation of a substandard and insanitary area or areas and for recreational and other facilities incidental or appurtenant thereto. The legislature may provide additional conditions to the making of such loans or subsidies consistent with the purposes of this article. The occupancy of any such project shall be restricted to persons of low income as defined by law and preference shall be given to persons who live or shall have lived in such area or areas.

§ 7. [Liability arising from guarantees to be deemed indebtedness; method of computing.]

The liability arising from any guarantee of the principal of and interest on indebtedness contracted by a public corporation shall be deemed indebtedness in the amount of the face value of the principal thereof remaining unpaid. The liability arising from any guarantee of only the interest on indebtedness contracted by a public corporation shall be deemed indebtedness in the amount of the commuted value of the total interest guaranteed and remaining unpaid, calculated on the basis of an annual interest rate of four per centum.

§ 8. [Excess condemnation.]

Any agency of the state, or any city, town, village or public corporation, which is empowered by law to take private property by eminent domain for any of the public purposes specified in section one of this article, may be empowered by the legislature to take property necessary for any such purpose but in excess of that required for public use after such purpose shall have been accomplished;

and to improve and utilize such excess, wholly or partly for any other public purpose, or to lease or sell such excess with restrictions to preserve and protect such improvement or improvements.

§ 9. [Acquisition of property for purposes of article.]

Subject to any limitation imposed by the legislature, the state, or any city, town, village or public corporation, may acquire by purchase, gift, eminent domain or otherwise, such property as it may deem ultimately necessary or proper to effectuate the purposes of this article, or any of them, although temporarily not required for such purposes.

§ 10. [Power of legislature; construction of article.]

The legislature is empowered to make all laws which it shall deem necessary and proper for carrying into execution the foregoing powers. This article shall be construed as extending powers which otherwise might be limited by other articles of this constitution and shall not be construed as imposing additional limitations; but nothing in this article contained shall be deemed to authorize or empower the state, or any city, town, village or public corporation, to engage in any private business or enterprise other than the building and operation of low rent dwelling houses for persons of low income as defined by law, or the loaning of money to owners of existing multiple dwellings as herein provided.

THE REDEVELOPMENT COMPANIES LAW

(New York Laws 1943, Ch. 234, as amended)

§ 1. Short title

This act shall be known and may be cited and referred to as the "Redevelopment Companies Law."

§ 2. Policy of state and purpose of act

It is hereby declared that in certain areas of municipalities located within this state there exist substandard conditions and insanitary housing conditions owing to obsolescence, deterioration and dilapidation of buildings, or excessive land coverage, lack of planning, of public facilities, of sufficient light, air and space, and improper design and arrangement of living quarters; that there is not in such areas a sufficient supply of adequate, safe and sanitary dwelling accommodations properly planned and related to public facilities; that modern standards of urban life require that housing be related to adequate and convenient public facilities; that the aforesaid substandard and insanitary conditions depress and destroy the economic value of large areas and by impairing the value of private investments threaten the sources of public revenues; that the public interest requires the clearance, replanning, reconstruction and neighborhood rehabilitation of such substandard and insanitary areas, together with adequate provision for recreational and other facilities incidental and appurtenant thereto according to the requirements of modern urban life and that such clearance, replanning, reconstruction and neighborhood rehabilitation are essential to the protection of the financial stability of such municipalities; that in order to protect the sources of public revenue it is necessary to modernize the physical plan and conditions of urban life; that these conditions cannot be remedied by the ordinary operations of private enterprise; that provision must be made to encourage the investment of funds in cor-

porations engaged in providing redevelopment facilities to be constructed according to the requirements of city planning and in effectuation of official city plans and regulated by law as to profits, dividends and disposition of their property or franchises; that provision must be made to enable insurance companies to provide such facilities, subject to regulation by law as to the return from such facilities and the disposition of property acquired for such purpose; and that provision must also be made for the acquisition for such corporations and companies at fair prices of real property required for such purposes in substandard areas and for public assistance of such corporations and companies by the granting of partial tax exemption; that the cooperation of the state and its subdivisions is necessary to accomplish such purposes; that the clearance, replanning and reconstruction, rehabilitation and modernization of substandard and insanitary areas and the provision of adequate, safe, sanitary and properly planned housing accommodations in effectuation of official city plans by such corporations and companies in these areas are public uses and purposes for which private property may be acquired for such corporations and companies and partial tax exemption granted; that these conditions require the creation of the agencies, instrumentalities and corporations hereinafter prescribed for the purpose of attaining the ends herein recited; and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

§ 3. Definitions

As used in this act the following terms shall mean and include:

1. "Area." A section of a municipality wherein the planning commission finds that substandard conditions or insanitary housing conditions exist. An area may include land whether improved or unimproved, and buildings or

improvements not in themselves insanitary or substandard, the inclusion of which is deemed necessary by such commission for the effective clearance, replanning, reconstruction or rehabilitation of the area of which such land or property is a part.

2. "Condemnation." The acquisition of real property in the manner provided by any general, special or local law or city charter for the acquisition of real property by the municipality in which such property is to be taken.

3. "Insurance company." Any insurance company authorized to transact business in this state.

4. "Municipality." A city, town or village.

5. "Plan." A plan or undertaking for the clearance, replanning and reconstruction or rehabilitation of a substandard or insanitary area or areas and for recreational and other facilities incidental or appurtenant thereto to effectuate the purposes of article eighteen of the constitution or any other provision of the constitution delegating any similar power.

6. "Planning commission." The planning commission means any agency of a municipality authorized to prepare, adopt or amend the map of the municipality or empowered to prepare and adopt and from time to time modify a comprehensive or master plan of the municipality, if there be one, or if there be none, the local legislative body of the municipality.

7. "Local legislative body." (a) In a city, the board of aldermen, common council, council, commission or other board or body now or hereafter vested by its charter or other law with jurisdiction to enact ordinances or local laws, except that if there be a board of estimate, the term shall mean only such board of estimate; (b) in a town, the town board; (c) in a village, the board of trustees.

8. "Project." A specific work or improvement to effectuate all or any part of a plan including lands, buildings and improvements acquired, owned, constructed, managed or operated in an area by a redevelopment company or an insurance company providing dwelling accommodations pursuant to this act and such business, commercial, cultural or recreational facilities appurtenant thereto as may be approved pursuant to section fifteen of this act.

9. "Real property." Lands and improvements, lands under water, waterfront property, the water of any lake, pond or stream, and any and all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest and right therein, legal and equitable, in lands or water, and the right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of judgment, mortgage, or otherwise.

10. "Supervising agency." The municipal comptroller in a municipality having a comptroller; in a municipality having no comptroller, the chief financial officer of such municipality. However, as to any insurance company providing dwelling accommodations pursuant to this act, or if any of the stock and income debenture certificates having voting power of a redevelopment company are or are to be issued to one or more insurance companies, the term shall mean only the superintendent of insurance.

§ 4. Redevelopment companies; how created

A redevelopment company may be created by three or more persons signing, acknowledging and filing a certificate which shall contain:

1. The name of the proposed redevelopment company.

2. The purposes for which it is to be formed which shall be as follows: To acquire one or more areas under a plan or plans, and to construct, own, maintain, operate,

sell and convey projects pursuant to the terms and provisions of this act.

3. The amount of the capital stock, and if any be preferred stock, the preference thereof.

4. The number of shares of which the capital shall consist, all of which shall have a par value.

5. The city, village or town in which its principal business office is to be located; if located in the city of New York, the borough thereof in which it is to be located.

6. Its duration, which shall not be less than twenty years.

7. The number of directors, which shall not be less than three and who need not be stockholders.

8. The names and post-office addresses of the directors for the first year.

9. The names and post-office addresses of the subscribers to the certificate and a statement of the number of shares of stock which each agrees to take in the redevelopment company.

10. The certificate may provide that in the event that income debenture certificates are issued by the redevelopment company the owners thereof may be given the same right to vote as they would have if possessed of certificates of stock of the amount and par value of the income debenture certificates held by them. If provision is made for the issuance of income debenture certificates, interest shall be paid by the redevelopment company on income debenture certificates only out of net earnings of the redevelopment company that would be applicable to payment of dividends if there were no income debentures.

11. A provision that, so long as this act shall remain applicable to any project of the redevelopment company, the real property of the redevelopment company shall not be

sold, transferred or assigned except as permitted by the terms and provisions of this act.

12. A declaration that all of the subscribers to the certificate are of full age; that at least two-thirds of them are citizens of the United States and that at least one of them is a resident of the state of New York; that at least one of the persons named as a director is a citizen of the United States and a resident of the state of New York.

13. A declaration that the redevelopment company has been organized to serve a public purpose and that it shall be and remain subject to the supervision and control of the supervising agency except as provided in this act, so long as this act remains applicable to any project of the redevelopment company; that all real and personal property acquired by it and all structures erected by it, shall be deemed to be acquired or created for the promotion of the purposes of this act.

14. A declaration that, after providing for all expenses, taxes and assessments, there shall be paid annually out of the earnings of the redevelopment company for interest, amortization, depreciation and dividends, a sum equal to but not exceeding six per centum of the total actual final cost of the project as defined by subdivision two of section thirteen of this act; that the obligation in respect of such payments shall be cumulative, and any deficiency in interest, amortization, depreciation and dividends in any year shall be paid either from any cash surplus derived from earnings remaining in the treasury of the redevelopment company in excess of the amount necessary to provide such cumulative annual sums or from the first available earnings in subsequent years; and that any cash surplus derived from earnings remaining in the treasury of the redevelopment company in excess of the amount necessary to provide such cumulative annual sums shall, upon dissolution of the company, be paid into the general fund of the municipality.

15. A declaration that, upon the dissolution of the company pursuant to the provisions of subdivision one of section twenty-four, the property may be conveyed in fee as provided in said subdivision.

16. A declaration that mortgage indebtedness, income debenture certificates and stock of the redevelopment company may be retired if, as and when there shall be funds available for amortization purposes in the treasury of the redevelopment company.

§ 5. Consent of supervising agency and local legislative body to incorporation of redevelopment companies

If any certificate of incorporation of a redevelopment company shall be presented to the secretary of state he shall not file such certificate unless a certificate of the consent of the supervising agency shall accompany the same. A certificate of amendment of a certificate of incorporation shall not be filed by the secretary of state unless a certificate of the consent of the supervising agency and a certificate of consent of the local legislative body of the municipality in which the project is located shall accompany the same.

§ 6. Application of other corporation laws

The provisions of the business corporations law, general corporation law and stock corporation law as presently in effect and as hereafter from time to time amended, shall apply to redevelopment corporations, except where such provisions are in conflict with the provisions of this act. In the event that any action with respect to which the holders of income debentures shall have the right to vote is proposed to be taken, then notice of any meeting at which such action is proposed to be taken shall be given to such holders in the same manner and to the same extent as if they were stockholders entitled to notice of and to vote at such meeting, and any certificate filed pursuant to law in

the department of state with respect to any such action, whether taken with or without meeting, and any affidavit required by law to be annexed to such certificate, shall contain the same statements or recitals and such certificate shall be subscribed and acknowledged, and such affidavit shall be made, in the same manner as if such holders were stockholders holding shares of an additional class of stock entitled to vote on such action, or with respect to the proceedings provided for in such certificate.

§ 7. Powers of redevelopment companies

Each redevelopment company shall have and may exercise such of the powers conferred by the general corporation law as shall be necessary in conducting the business of a redevelopment company and consistent with the provisions of this act.

§ 8. Limited return on investment

Subject to the provisions of section twenty-four of this act, there shall be paid annually out of the earnings of the redevelopment company, after providing for all expenses, taxes and assessments, a sum for interest, amortization, depreciation and dividends, equal to but not exceeding six per centum of the total actual final cost of the project as defined by subdivision two of section thirteen of this act; the obligation in respect of such payments shall be cumulative, and any deficiency in interest, amortization, depreciation and dividends in any year shall be paid either from any cash surplus derived from earnings remaining in the treasury of the redevelopment company in excess of the amount necessary to provide such cumulative annual sums or from the first available earnings in subsequent years; and any cash surplus derived from earnings remaining in the treasury of the redevelopment company in excess of the amount necessary to provide such cumulative annual sums shall, upon dissolution of the company, be paid into the general fund of the municipality except as otherwise

contemplated by subdivision five of section twenty-four of this act.

§ 9. Consideration for issuance of stocks and bonds

No redevelopment company shall issue stock, bonds or income debenture certificates except for money or property actually received for the use and lawful purposes of the redevelopment company. No stock, bonds or income debenture certificates shall be issued for property except upon a valuation approved by the supervising agency and such valuation shall be used in computing actual or estimated cost.

§ 10. Minimum amount of stock and debentures

Except as provided in this section the stock and income debenture certificates issued by the redevelopment company shall in no event be less than the total of twenty per centum of the actual cost of any project or projects undertaken pursuant to this act. The supervising agency may permit stock or income debenture certificates to be issued for working capital to be used in connection with such project to an amount not exceeding three per centum of the estimated cost, or three per centum of the total actual final cost, if that should exceed the estimated cost of a project.

The provisions of this section shall not be applicable to any redevelopment company if funds made available by the federal government or any instrumentality thereof, or any mortgage or mortgage bonds insured by the federal housing administrator or any other instrumentality of the federal government are used in financing the project in whole or in part.

§ 11. Income debentures

With the approval of the supervising agency, the certificate of incorporation, or an amended certificate, may authorize the issuance of income debenture certificates bearing no greater interest than six per centum per annum.

Such income debenture certificates and any instrument under which they are issued may contain such other provisions, including provision for amortization by serial maturities, through the operation of a sinking fund or otherwise, as may be approved by the supervising agency.

§ 12. Mortgages and mortgage bonds

Any redevelopment company, subject to the approval of the supervising agency, may borrow funds and secure the repayment thereof by bond and mortgage or by an issue of bonds under a trust indenture. Each mortgage or issue of bonds of a redevelopment company shall relate only to a single specified project and to no other and such bonds shall be secured by mortgage upon all of the real property of which such project consists. First lien bonds of such redevelopment company when secured by a mortgage not exceeding eighty per centum of the estimated cost prior to the completion of the project, or eighty per centum of the appraised value or actual cost, but in no event in excess of eighty per centum of the actual cost, after such completion, as certified by the supervising agency, are hereby declared securities in which all public officers and bodies of the state and of its municipal subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, executors, administrators, guardians, trustees and all other fiduciaries in the state may properly and legally invest the funds within their control. The bonds so issued and secured and the mortgage or trust indenture relating thereto, may create a first or senior lien and a second or junior lien upon the real property embraced in any project; provided, however, that the total mortgage liens shall not exceed eighty per centum of the estimated cost prior to the completion of the project, or eighty per centum of the appraised value or actual cost, but in no event in excess of eighty per centum of

the actual cost after such completion, as certified by the supervising agency. Where there are first and second mortgage liens upon the property embraced in a project, only the first or senior lien thereon shall be deemed a security in which such officers, bodies, corporations, associations and fiduciaries, may invest the funds within their control. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the supervising agency, including the right to assignment of rents and entry into possession in case of default; but the operation of the housing project in the event of such entry by mortgagee or receiver shall be subject to regulations promulgated by the supervising agency. Provisions for the amortization of the bonded indebtedness of companies formed under this act shall be subject to the approval of the supervising agency. So long as funds made available by the federal government or any instrumentality thereof or any mortgage or mortgage bonds, insured by the federal housing administrator or any other instrumentality of the federal government are used in financing, in whole or in part, any project under this act, the capital structure of a redevelopment company undertaking such project and the proportionate amount of the cost of the lands and improvements to be represented by mortgages or bonds shall be entirely in the discretion of the supervising agency; and all restrictions as to the amounts to be represented by mortgages, mortgage bonds, income debentures or stock shall be inapplicable to such projects or to redevelopment companies undertaking such projects, except that the bonds, mortgages, debentures and stock covering any project shall not exceed the total actual final cost of such project as defined in subdivision two of section thirteen of this act.

Interest rates on mortgage indebtedness shall not exceed five per centum per annum.

§ 13. Limitations

In addition to limitations prescribed by this act a redevelopment company shall not have power to:

1. Acquire any real property or interest therein for a project or projects unless the supervising agency and the local legislative body determine as provided in this act that such acquisition is necessary or convenient for the public purpose defined in this act.

2. Issue its stock, debentures and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project. The actual cost of such project shall include the cost of the lands and improvements constituting the project and charges for financing and supervision approved by the supervising agency, condemnation charges and interest and other carrying charges during the period of acquisition and of construction. The total actual final cost shall be deemed to be an amount equal to such actual cost plus an allowance for working capital. Such allowance for working capital shall not exceed an amount equal to three per centum of the estimated cost or of the total actual final cost of the project if that shall be greater than the estimated cost.

3. Enter into contracts for the payment of salaries to officers or employees, or for the construction or for the substantial repair, improvement or operation of projects except subject to the approval of the supervising agency.

§ 14. Use of projects

The project or projects of any redevelopment company shall be designed and used primarily for housing purposes, but portions of the project may be planned and used for business, commercial, cultural or recreational purposes appurtenant thereto as approved in the project.

§ 15. Procedure for submission and approval of plan or project

Every plan or plan of a project proposed by a redevelopment company shall contain a general description of the area to be redeveloped and a statement of the plan of redevelopment with such detail of information with reference thereto as may be necessary to a general understanding thereof.

After preliminary approval thereof by the supervising agency as to conformity with the provisions and purposes of this act, every such plan or plan of a project shall be submitted to the planning commission for approval of the plan or plan of the project relating to:

1. Height and bulk of structures, density of population and percentage of land coverage by structures as to their conformity with the purposes of this act and with the master plan, if any; and the relationship of the density of population contemplated by the plan or plan of the project to the distribution of the population of the municipality in other areas or parts thereof, and

2. Provision, if any, for business or commercial facilities appurtenant to the plan or project, relationship to existing and planned public facilities, adequacy and planned rearrangement of street facilities and provisions for light, air, cultural and recreational facilities as to their conformity with the purposes of this act and their adequacy for accommodation of the density of population contemplated by the plan or plan of the project.

The planning commission, after public hearing on a plan or plan of a project, may:

a. Issue an unqualified certificate of approval thereof, or

b. Issue a certificate of conditional or qualified approval thereof, with or without recommendations, or

c. Disapprove thereof.

After action thereon by the planning commission, such plan or plan of a project with a proposed form of contract between the municipality and the company or, when all stock, debentures and mortgage bonds of the company are owned or are to be owned by one or more insurance companies, between the municipality, redevelopment company and such insurance company or companies shall be submitted by the redevelopment company, with a certificate of approval of the supervising agency and the certificate or a statement of action on the plan or project by the planning commission, to the local legislative body for its approval as to conformity with the provisions and purposes of this act, the extent of the tax exemption to be granted pursuant to section twenty-six, the amount and nature of the property to be condemned for the redevelopment company by the municipality and the terms and conditions of payment therefor by the redevelopment company, the amount of publicly owned land or facilities to be sold to the redevelopment company or exchanged for redevelopment company-owned lands and the availability of other suitable dwelling accommodations for families living in the area or part thereof to be affected by the plan or plan of the project.

As part of an approved project the local legislative body may require a redevelopment company to dedicate to the municipality or any agency thereof in the manner provided by law specified portions of the land in a project for parks, streets, public recreational and other public purposes.

The contract shall regulate the rents to be charged for rooms in the project and may contain such other provisions, not inconsistent with this act, as may be deemed necessary or desirable for the financing, construction, operation and supervision of the project.

In any case where the planning commission shall have issued a certificate of unqualified approval of a plan or plan

of a project approval thereof by the local legislative body may be by resolution adopted by a majority of the whole number of votes authorized to be cast by all of the members thereof. In any case where the planning commission shall not have issued a certificate of unqualified approval, the plan or plan of a project may nevertheless be approved by the local legislative body, after public hearings thereon, by resolution adopted by a three-fourths vote of the whole number of votes authorized to be cast by all of the members thereof. The local legislative body is authorized to enter into the necessary contract or contracts on behalf of the municipality.

If the contract parties are a municipality, a redevelopment company and one or more insurance companies which own or will own all of the stock, debentures, bonds and mortgage indebtedness of such redevelopment company, or if the project is undertaken by an insurance company, then the certificate of the supervising agency approving such contract shall terminate the functions of the supervising agency pursuant to this act, and after the execution of such contract all references herein to the approval or other action by the supervising agency shall be inapplicable to the project provided for in such contract and to such redevelopment company or the insurance company undertaking such project.

§ 16. Limitation on changes.

It shall be unlawful during the period of tax exemption, granted pursuant to section twenty-six of this act, for any redevelopment company or any successor in interest to its title to a project or any part thereof to change or modify any feature of a project for which approval of the planning commission is required by this act, without the approval of such commission, except by a three-quarters vote of the local legislative body.

§ 17. Transfer of real property to redevelopment company

Notwithstanding any requirement of law to the contrary or the absence of direct provision therefor in the instrument under which a fiduciary is acting, every executor, administrator, trustee, guardian or other person, holding trust funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, the state, its subdivisions, municipalities, all other public bodies, all public officers, persons, partnerships and corporations organized under or subject to the provisions of the insurance law, the superintendent of insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation, owning or holding any real property within an area, may grant, sell, lease or otherwise transfer any such real property to a redevelopment company and receive and hold any cash, stock, income debentures, bonds, mortgages, or other securities or obligations, secured or unsecured, exchanged therefor by such redevelopment company and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the redevelopment company in connection with a project or projects. An insurance company which has undertaken a project through direct ownership and/or lease may transfer to the project any real property which it owns or holds within an area and the actual cost of such property to the insurance company shall be included in the total actual final cost of such project.

§ 18. Rules and regulations

The planning commission and the supervising agency, respectively, shall have power to make rules and regulations to carry out their powers and duties pursuant to this act and to effectuate the purposes thereof.

§ 19. Fees

The supervising agency, the local legislative body and the planning commission, if any, may each adopt a reason-

able schedule of fees to be paid upon the filing with each of them of a plan, plans for a project or projects, amendments thereto and other instruments in connection therewith.

§ 20. Condemnation

A municipality may take property by condemnation for a redevelopment company, provided the contract or contracts executed pursuant to section fifteen contain a requirement that the company shall pay to the municipality all sums expended or required to be expended by the municipality in the acquisition of such real property, provision as to the time of payment and manner of securing payment thereof, and provisions requiring that the municipality receive, before proceeding with the acquisition of such real property, such assurances as to payment or reimbursement by the redevelopment company, or otherwise, as the local legislative body may deem advisable. Upon the execution of such contract or contracts the company shall cause to be made three copies of surveys or maps of the real property described in the contract, one of which shall be filed in the office of the redevelopment company, one in the office of the corporation counsel or chief law officer of the municipality, and one in the office in which instruments affecting real property in the county are recorded. The filing of such copies of surveys or maps in accordance with the provisions of this section shall be in lieu and in complete satisfaction of any other requirement for the filing of surveys or maps imposed upon either the municipality or the redevelopment company by any general, special or local law. Upon compliance by the redevelopment company with the applicable terms and conditions of such contract or contracts the municipality shall proceed to acquire title to the real property and when title to the real property shall have vested in the municipality, it shall convey the same to the redevelopment company upon final compliance by the redevelopment company with such terms and conditions. As

soon as title shall have vested in the municipality, the redevelopment company may, upon the authorization of the mayor, enter upon the real property taken, take over and dispose of existing improvements, and carry out the terms of the project with respect thereto.

Real property in an area, needed or convenient for the project, which is to be acquired by condemnation pursuant to this section, may be acquired by the municipality for the project, including any property devoted to a public use, whether or not held in trust, notwithstanding that such property may have been previously acquired by condemnation or is owned by a public utility corporation, it being hereby expressly determined that the public use in conformity with the provisions of this act shall be deemed a superior public use. The local legislative body may consent to the condemnation of property owned by the municipality, whether or not such property be held in trust, or may sell or lease any such property necessary or convenient for a project of a redevelopment company without public bidding, provided notice of such sale or lease is published and a public hearing is held before the local legislative body. The term of any such lease shall not be limited by any provision of any general, special or local law or city charter limiting the period of time during which a lease or any renewal thereof may run. Real property belonging to a public utility corporation may not be acquired without the approval of the commission or other officer or tribunal having regulatory power over such corporation.

An award of compensation shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance or reconstruction, or proposed assembly, clearance or reconstruction for the purposes of this act of the real property in an area.

A local legislative body, upon payment therefor or upon exchange for other lands, may convey to any redevelopment company land in any street or public place which is duly closed or discontinued pursuant to the plan of a project.

Nothing in this section shall be deemed to forbid or prevent the acquisition of any real or personal property by a redevelopment company by gift, devise, bequest, grant, or subject to the provisions of this act, by purchase at public or private sale.

§ 21. Regulation of redevelopment companies

The supervising agency shall:

Examine each redevelopment company and keep informed as to its general condition, its capitalization and the manner in which its property is constructed, leased, operated or managed with respect to its compliance with all provisions of law and orders of the supervising agency.

The supervising agency may:

1. Either itself or through its inspectors or employees duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus and devices of any redevelopment company; examine all books, contracts, records, documents and papers of any redevelopment company and by subpoena duces tecum compel the production thereof.

2. In its discretion, prescribe uniform methods and forms of keeping accounts, records and books to be observed by redevelopment companies, and after a hearing to prescribe by order accounts in which particular outlays and receipts shall be entered, charged or credited.

3. Require specific answers to questions upon which it may desire information and require the filing of periodic reports in the form, covering the period, and at the time prescribed by it.

§ 22. Sinking fund

Unless other provision be made therefor in the contract with the municipality, the supervising agency, if he shall deem it feasible at any time, subject to the limitation con-

tained in section eight of this act, may require a redevelopment company to provide for earnings, after provision for dividends and interest, a sinking fund in an amount to be fixed by such supervising agency for the gradual retirement of the stock and income debenture certificates of such company. Such sinking fund may be used either for the purchase, from time to time, of stock or income debenture certificates at a price approved by the supervising agency not exceeding par value thereof with accrued and unpaid dividends or interest, or if it be not practicable to purchase such stock or such income debenture certificates at a price so approved, the moneys in such sinking fund may be added to the surplus of such company. Any stock or income debenture certificates purchased out of such sinking fund shall be cancelled and shall not be reissued.

§ 23. Transfer of title or foreclosure of project

1. Until the termination of the tax exemption, whether by expiration or by any other cause, a redevelopment company, heretofore or hereafter organized, shall not have power to sell any project without the consent of the local legislative body.

2. If an action be brought to foreclose a mortgage or tax lien upon a redevelopment project, heretofore or hereafter authorized pursuant to this act, and the property constituting the project shall be acquired at the foreclosure sale, or by a conveyance in lieu of such sale, by a redevelopment company organized pursuant to this act, or by the federal government or an instrumentality thereof, or by a corporation which is, or by agreement has become subject to the supervision of the superintendent of banks or the superintendent of insurance, such successor in interest shall acquire such project subject to all provisions of the contract regulating such project and shall be entitled to all of the benefits contained in such contract. In all other cases of sale at foreclosure or forced sale, the project shall be sold free of all

restrictions, except such covenants running with the land as may be contained in the contract regulating the project, and the tax exemption, if any, theretofore granted to such project shall immediately terminate.

§ 24. Dissolution

1. After termination of any tax exemption granted pursuant to section twenty-six of this act, whether by expiration or by any other cause, or in the event that prior thereto the redevelopment company elects to pay to the municipality the total of all accrued taxes for which such exemption was granted and received, together with interest at the rate of five per centum per annum, the redevelopment company may voluntarily dissolve, and title to the project may be conveyed in fee to the owner or owners of its capital stock or to any corporation designated by it or them for the purpose, or the redevelopment company may be dissolved and reconstituted pursuant to appropriate laws relating to the formation and conduct of corporations, after providing, in any case, for the payment of all current operating expenses, taxes, indebtedness and all accrued interest thereon, and the par value of and accrued dividends on the outstanding stock of the redevelopment company. If, after making such provision and after the conveyance of the project, a cash surplus remains in the treasury of the redevelopment company, such cash surplus shall, upon dissolution, be paid into the general fund of the municipality. After such dissolution and conveyance or such reconstitution, the provisions of this act shall become and be inapplicable to any such project and its owner or owners, and any tax exemption granted to such redevelopment company pursuant to section twenty-six of this act shall cease and terminate.

2. If prior to the termination of any tax exemption the project is sold for any reason, the redevelopment company

shall dissolve, and any tax exemption granted to such redevelopment company pursuant to section twenty-six of this act shall cease and terminate, except as otherwise provided in section twenty-three of this act. In such case the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and the face value of their income debenture certificates with accrued and unpaid dividends or interest upon such stock and income debenture certificates, and any remaining surplus shall be paid into the general fund of the municipality.

3. In no event shall a redevelopment company be voluntarily dissolved unless provision is made for the payment in full of the remaining balance of principal and interest due or unpaid upon any mortgage on its property or any part thereof, but any project may, with the consent of the local legislative body of the municipality, be conveyed and transferred to the municipality subject to such mortgage and accrued interest.

4. Unless the local legislative body of the municipality shall consent to the voluntary dissolution of a redevelopment company, such a company shall not dissolve except in accordance with subdivisions one and two of this section or upon the expiration of the period of corporate existence as fixed by its certificate of incorporation.

5. With the consent of the local legislative body and the superintendent of insurance, a redevelopment company heretofore or hereafter organized may voluntarily dissolve prior to the termination of any tax exemption granted pursuant to section twenty-six of this act and title to the project may be conveyed, and all other assets of such redevelopment company may be transferred, to an insurance company, whether or not such project shall have been theretofore completed. After such dissolution and conveyance such tax exemption shall continue for the period of years

originally provided for in the contract, or for the unexpired portion thereof if such period shall have theretofore commenced, subject to prior termination pursuant to section twenty-five or section twenty-six of this act, and the provisions of this act shall thereafter be applicable to such project and to such insurance company to the same extent and with the same force and effect as though such project had been initially undertaken by such insurance company pursuant to section twenty-five of this act; provided, however, that nothing herein contained shall be deemed to require the resubmission of the plan of the project and the contract relating thereto for approval pursuant to section fifteen of this act.

6. The contract with the municipality may contain such other provisions for the dissolution of the redevelopment company as may be deemed advisable, not inconsistent with the provisions of this section. In case of a dissolution and conveyance in accordance with subdivision five of this section, the contract may be modified consistently with the provisions of said subdivision five and section twenty-five of this act, any such modifications to be approved by the superintendent of insurance and the local legislative body.

7. Upon dissolution as provided in this section, this act shall become and be inapplicable to the project and its owner or owners except as otherwise contemplated by subdivision five of this section.

§ 25. Participation by certain corporations

One or more insurance companies shall have the power to organize, or cause to be organized, a redevelopment company formed pursuant to the provisions of this act, and to purchase for cash or to receive and hold in exchange for property, and to own and control, the stock or the income debenture certificates or both of any redevelopment company and shall also have power to invest, singly or jointly, in a bond and first mortgage or in an issue of bonds secured

by mortgage or trust indenture constituting a first lien upon any project as provided in this act. An insurance company, however, which owns stock or income debenture certificates of a redevelopment company and also owns bonds or a bond and mortgage or an interest in a bond and mortgage of the same redevelopment company shall not, without the consent of the supervising agency, sell all or any part of such bonds or such bond and mortgage or of its interest in such bond and mortgage unless it shall simultaneously sell such stock and such income debenture certificates owned by it.

Notwithstanding any other provision of law, an insurance company or companies operating a redevelopment project or owning all of the stock of a redevelopment company are hereby expressly authorized to enter into contracts contemplated by this act and to agree by contract with the municipality not to sell, assign, or otherwise transfer such project or the stock, income debentures or mortgage bonds of such redevelopment company during the period of tax exemption provided for by the contract pursuant to this act without the consent of the local legislative body of the municipality. An insurance company or companies owning all of the stock of a redevelopment company are hereby expressly authorized to make such capital contributions to any such redevelopment company, in cash or by cancellation of securities or otherwise, as may be necessary to enable such redevelopment company to comply with all conditions precedent to its dissolution and conveyance of its property in accordance with section twenty-four of this act, and upon dissolution of such a redevelopment company, to acquire the project, complete the same if not theretofore completed, and own and operate the same as a permanent investment for such period as it or they may deem desirable either directly or through acquisition and ownership of the capital stock of any corporation which may acquire title to the project pursuant to subdivision one of section twenty-four.

An insurance company, instead of investing its funds in the stock and debentures or other obligations of a rede-

velopment company, may through direct ownership and/or lease acquire, own, construct, manage or operate as an investment for such period as it may deem desirable, one or more projects, in which event the provisions of sections seven, fourteen, fifteen, sixteen, seventeen, twenty, twenty-three, and twenty-six and subsection one of section thirteen of this act applicable to redevelopment companies shall be applicable to such insurance company in its operations with respect to any such project but not otherwise. Said provisions and the ensuing provision of this section shall cease to be applicable to any such project and to such insurance company in its operations with respect to such project after termination of any tax exemption granted pursuant to section twenty-six of this act with respect to such project, whether such termination shall be by expiration or by any other cause, or in the event that prior thereto the insurance company elects to pay the municipality the total of all accrued taxes for which such exemption was granted and received, together with interest at the rate of five per centum per annum. If any such project shall be sold by an insurance company, the tax exemption with respect to such project shall thereupon cease and terminate unless the local legislative body shall otherwise provide.

Until the termination of any tax exemption granted pursuant to section twenty-six of this act or until the provisions of this act shall otherwise cease to be applicable:

1. An insurance company shall be entitled to earn and retain annually on a cumulative basis in respect of each project operated by it hereunder, before depreciation but after providing for all expenses, taxes and assessments attributable to such project or to the income therefrom, a sum equal to but not exceeding six per centum of the total actual final cost of the project as defined by subdivision two of section thirteen of this act.

2. Separate accounts shall be kept for each project operated by an insurance company.

3. If the income from any such project for any year, after all expenses, taxes and assessments attributable thereto or to the income therefrom, shall be in excess of six per centum of the total actual final cost of such project as defined by subdivision two of section thirteen of this act, such excess shall be credited to a special reserve account.

4. If the income from any such project for any year, after all expenses, taxes and assessments attributable thereto or to the income therefrom shall be less than six per centum of such total actual final cost, such deficiency shall be charged against such special reserve account.

The amount of any accrued taxes and interest thereon paid by an insurance company pursuant to the second paragraph of section twenty-six of this act may be charged against such special reserve account. An amount equal to any balance remaining to the credit of such special reserve account on the termination of the period of tax exemption shall be paid into the general fund of the municipality. If any project shall be conveyed to an insurance company in accordance with subdivision five of section twenty-four of this act, an amount equal to all accrued and unpaid interest, amortization and dividends on the stock and evidences of indebtedness of the redevelopment company theretofore accumulated in accordance with section eight of this act shall be charged against the special reserve account except to the extent included in total actual final cost, and any remaining cash surplus derived from earnings remaining in the treasury of the redevelopment company shall be transferred to such insurance company and shall be credited by it to the special reserve account provided for in this section applicable to such project.

Except as specifically provided herein this act shall not be deemed to limit or restrict any power or authority granted to insurance companies or to any other corporation or to any fiduciary by any other provision of law heretofore or hereafter enacted.

§ 26. Tax exemptions

The local legislative body of any municipality in which a project of such company is or is to be located may by contract agree with any redevelopment company to exempt from local and municipal taxes, other than assessments for local improvements, all or part of the value of the property included in such project which represents an increase over the assessed valuation of the real property, both land and improvements, acquired for the project at the time of its acquisition by the redevelopment company which originally undertook the project and for such definite period of years as such contract may provide. The tax exemption shall not operate for a period of more than twenty-five years, commencing in each instance from the date on which the benefits of such exemption first become available and effective.

A redevelopment company which has been granted and has received tax exemption pursuant to this section may at any time elect to pay to the municipality the total of all accrued taxes for which exemption was granted and received, together with interest at the rate of five per centum per annum. Upon such payment the tax exemption of the project shall thereupon cease and terminate.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 402

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,
Petitioners,

against

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE UNDER RULE 27

The New York Chapter of the National Lawyers Guild moves the Court for leave to file brief amicus curiae in the above entitled matter.

1. New York Chapter of the National Lawyers Guild is an organization of lawyers vitally concerned with the interpretation of the Fourteenth Amendment to the Constitution wherein it affects discrimination against persons because of their race, which question is involved in this appeal.

2. This brief is submitted because it is believed that the conclusive effect of the opinion of this Court in *Shelley* v. *Kraemer* (334 U. S. 1) has not been fully set forth in the briefs presented by the parties hereto.

3. The appellants herein have consented to the filing of this brief and respondents have withheld their consent to the filing of this brief.

LESTER M. LEVIN,
Attorney for New York Chapter,
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NOTICE OF MOTION

Now comes the New York Chapter of the National Lawyers Guild and moves the Court for leave to file brief Amicus Curiae in the above entitled matter.

LESTER M. LEVIN,
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MOTION FILED NOV 16 1949

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 402

JOSEPH DORSEY, MONROE DOWLING AND CALVIN HARPER,

Petitioners,

vs.

STUYVESANT TOWN CORPORATION AND METROPOLITAN LIFE INSURANCE COMPANY,

Respondents

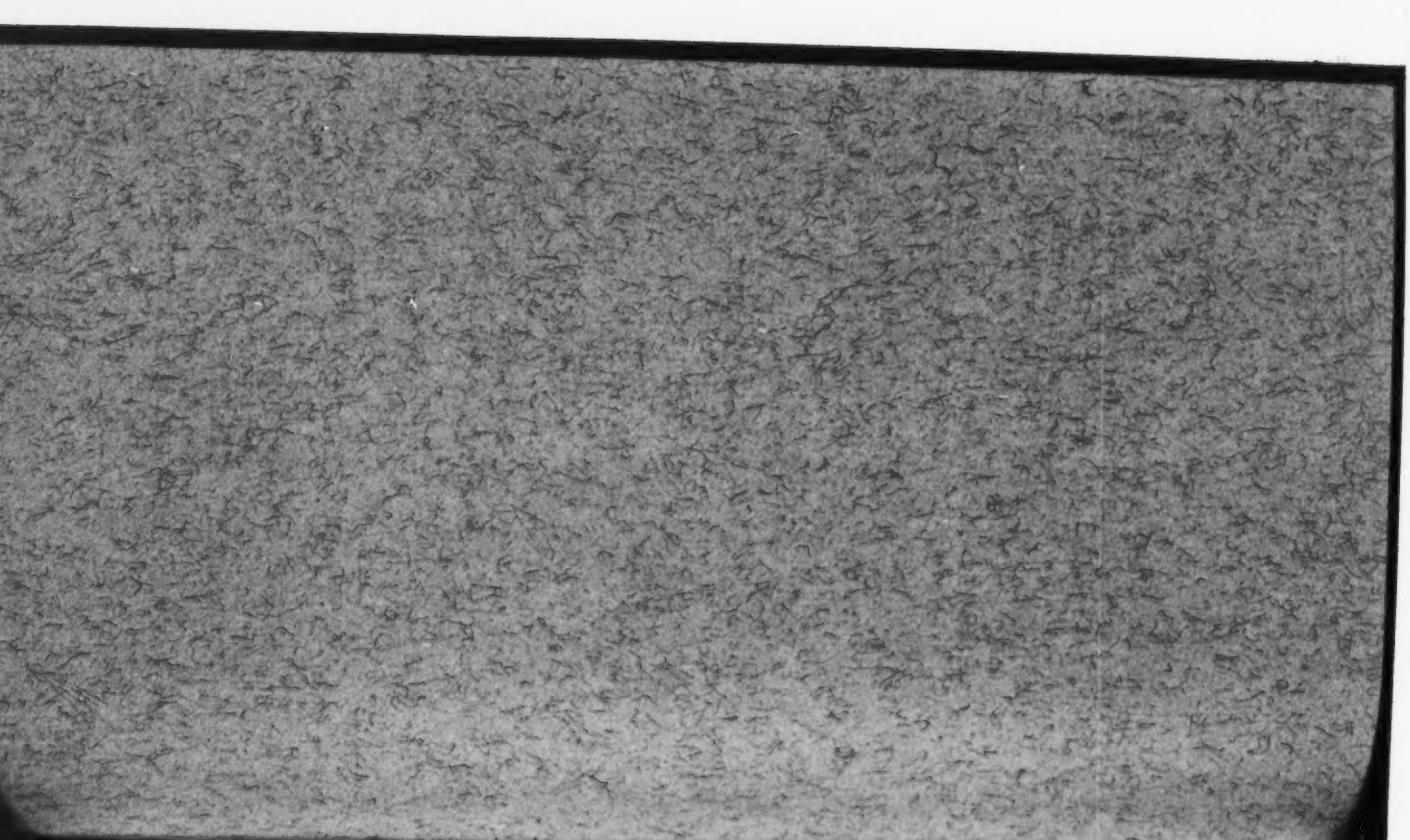
MOTION FOR LEAVE TO FILE BRIEF and BRIEF OF AMERICAN VETERANS COMMITTEE, INC. (AVC) Amicus Curiae

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IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PHINEAS INDRITZ,
RICHARD A. SOLOMON,
Attorneys for American Veterans Committee Amicus Curiae

NOVEMBER 16, 1949,
Washington, D. C.



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DORSEY v. STUYVESANT TOWN CORP.

OCTOBER TERM, 1949

No. 402

MOTION FOR LEAVE TO FILE BRIEF
Amicus Curiae

The American Veterans Committee, Inc. (AVC) respectfully moves this Court for leave to file the annexed *amicus curiae* brief in support of the Petition for Writ of Certiorari. We have filed with the Clerk of this Court a letter from the petitioners granting consent, and a letter from the respondents refusing consent, to the filing of an *amicus* brief by AVC.

The American Veterans Committee, Inc. (AVC) is an organization of veterans of World War II who have associated themselves to promote the democratic principles for which they fought, including the elimination of racial discrimination.[1]

This case involves the validity of racial discrimination in the selection of tenants in Stuyvesant Town, a housing project constructed and operated by the respondents in

---

[1] AVC's *amicus curiae* briefs in the following recent civil rights cases before this Court are illustrative of AVC's views: *Shelley* v. *Kraemer*, 334 U. S. 1 (1948); *Hurd* v. *Hodge*, 334 U. S. 24 (1948); *Takahashi* v. *Fish and Game Commission*, 334 U. S. 410 (1948); *United States* v. *C. I. O.*, 335 U. S. 106 (1948); *Stainback* v. *Mo Hock Ke Lok Po*, 336 U. S. 368 (1949); and the pending cases of *Sweatt* v. *Painter*, No. 44, and *Henderson* v. *United States, et al*, No. 25 (both Oct. Term, 1949).

cooperation with the City of New York under the authority of the New York State Redevelopment Companies Law (N. Y. Laws, 1942, ch. 845, as amended; L. 1943, ch. 234; L. 1947, ch. 840; McKinney's Unconsol. L. §§ 3401-3426).

AVC believes (1) that the racial discrimination in this case is incompatible with our democratic faith, is inimical to the welfare of the United States, and is violative of the Federal Constitution; and (2) that this case raises substantial Federal questions which are of such general importance that this Court should grant the petition for writ of certiorari and consider and decide them.

AMERICAN VETERANS COMMITTEE, INC. (AVC)
By: PHINEAS INDRITZ,
RICHARD A. SOLOMON

BRIEF OF AMERICAN VETERANS COMMITTEE (AVC) Amicus Curiae

Preliminary Statement. Stuyvesant Town covers a tract of 18 blocks in the heart of New York City, containing 35 buildings with 8759 apartments housing some 25,000 people. In 1943 the area was a slum housing some 10,000 people. Under a contract with the respondents, the City of New York evicted these residents, assembled the land by condemnation, closed off all public streets and conveyed all the land within the area to Stuyvesant Town Corporation, agreed to zone the area to facilitate operation of the project, and agreed to exempt project improvements from taxation for 25 years, an exemption equivalent to a grant of $50,000,000. The respondents thereupon built Stuyvesant Town as a low-rent housing project subject to special governmental control over the rents, profits, dividends, use, disposition and other aspects of the project.

The petitioners are veterans of World War II honorably discharged from the United States Armed Forces. Their applications for apartments in Stuyvesant Town have not been accepted solely because they are Negroes.

The basic legal question in this case is whether the large measure of governmental participation in the construction and operation of Stuyvesant Town, when joined with the racially discriminatory practice of the respondents in the selection of tenants, results in violation of the Fourteenth Amendment. That question is roundly discussed in the majority and dissenting opinions of the New York Court of Appeals which upheld the respondents' practice by a 4-3 decision [*Dorsey* v. *Stuyvesant Town Corp.*, 299 N. Y. 512, 87 N. E. (2d) 541 (1949)]; and in the petition for certiorari filed in this Court in which AVC concurs. This *amicus* brief is directed solely to those aspects which are of particular importance to veterans and to the successful rehabilitation of urban slums.

I. THE ISSUES RAISED IN THIS CASE ARE OF GREAT IMPORTANCE TO VETERANS AND TO THE PROGRESS OF URBAN REDEVELOPMENT AND SHOULD BE DECIDED BY THIS COURT.

A. Veterans have special need for new low-rent housing on a non-discriminatory basis

Both Negroes and whites served with distinction in the armed forces of the United States during World War II.[2]

[2] *Army Service Forces Manual* M-5, "Leadership and the Negro Soldier" (Oct. 1944), pp. 9, 10, 23, 74-95; *To Secure These Rights*, Report of President's Committee on Civil Rights, pp. 83-84 (Govt. Print. Off., Oct. 29, 1947). Before voluntary enlistments were stopped in World War II, Negroes had volunteered for military service in ratios far exceeding their ratio in the nation's population. *Army Service Forces Manual* M-5, *supra*, p. 5. Inquiry from the Veterans Administration indicates that over 1,275,000 veterans of World War II are non-white.

An inevitable byproduct of such service was a general dislocation in housing accommodations of veterans' families which has been rendered particularly acute by the general post-war housing shortage.

The housing needs of Negroes, and particularly Negro veterans, are abnormally critical. Surveys conducted by the U. S. Census Bureau and the Bureau of Labor Statistics from July 1946 through March 1947 have vividly revealed the serious housing needs of World War II veterans. *The Housing of Negro Veterans,* (Housing and Home Finance Agency, Wash., D. C., January, 1948).

In the 24 areas where separate statistics were taken for white and Negro veterans, 55% of all married Negro veterans, as compared to 33% of all married white veterans, were living either "doubled up" with their parents or other families, or in sub-standard "stop-gap" shelter such as rented rooms, trailers, and tourist cabins (p. 37). Moreover, in these areas, 37% of the Negro veterans, as compared to 14% of the white veterans, lived in dwellings requiring major repairs, or lacking one or more standard plumbing facilities such as private bath or toilet (p. 38). The solution to the Negro veterans' housing problem is further complicated by the fact that Negro veterans are able to pay substantially less rental for improved housing accommodations. The surveys revealed that in the south, white veterans could pay a median monthly rental of $46 as compared to $31 by Negro veterans; and in the north, although the median monthly rental which all veterans could pay was $45, Negro veterans could pay only $39 (p. 22). Furthermore, at the time of the surveys, only one-third as many habitable and vacant privately financed dwelling units were offered for rent or sale to Negroes as to whites (p. 28).

Thus, the Negro veteran, more than any other group, must look to new low-rent housing to solve his acute housing needs.

Congress has recognized the critical housing need of veterans and has enacted a series of statutes designed to make available adequate housing for veterans and their families. Thus, the Veterans Emergency Housing Act of May 22, 1946 (60 Stat. 207) expressly recognized the "unprecedented emergency shortage of housing, particularly for veterans of World War II and their families", and set up an allocation and priorities program to assure to *all* veterans of World War II a preference in purchasing *or renting* newly constructed housing.

Because of the continuing need of veterans for adequate housing, Congress has periodically continued and expanded this priority. Housing and Rent Act of June 30, 1947, sec. 4 (61 Stat. 193, 195), as amended by the act of Feb. 27, 1948 (62 Stat. 37); the act of March 30, 1948 (62 Stat. 93, 50 U. S. C., App., 1946 Ed., Supp. II, sec. 1884); and the act of March 30, 1949 (Pub. L. 31, 81st Cong.); and the Housing Act of July 15, 1949, secs 301, 302, 507 (Pub. L. 171, 81st Cong.). Under this legislation, veterans of World War II are entitled to priority in purchasing and renting housing accommodations, including those in Stuyvesant Town and other redevelopment projects. All of these statutes, as well as the Servicemen's Readjustment Act of June 22, 1944, as amended (38 U. S. C., 1946 Ed., secs. 693-697g) (the G.I. Bill of Rights) which authorizes the Veterans Administration to guarantee up to 50% of $4,000 borrowed by veterans of World War II for the purchase, construction, or improvement of a home, were enacted to assist "any" "veteran of World War II" who was not dishonorably discharged. Congress did not exclude Negro veterans from the benefit of these acts, and made no distinctions as to the race or color of the veterans who could secure these benefits.

Government-aided redevelopment projects, such as Stuyvesant Town, offer one of the best opportunities for meet-

ing the housing requirements of the Negro veteran as well as other Negro families. Their fixed low rents are made possible primarily through the subsidy of tax exemptions, cession of publicly owned land, condemnation proceedings to assemble private land and in some cases to shift to the whole community the cost of excessive land values obstructing new low-rent housing, and other governmental aid. Without such government aid, Stuyvesant Town and most other similar redevelopment projects could not be built. But arbitrary racial restrictions upon the selection of tenants, such as is imposed by the respondents, effectively block access by Negroes and Negro veterans to this important area of new low-rent housing, and effectively frustrate the policy of Congress that veterans' benefits be on a non-discriminatory basis.

B. Racial discrimination obstructs the purpose and progress of urban redevelopment

The problem raised by the respondents' practice of racial exclusion in operating a housing project intimately linked with government power and aid is not limited to Stuyvesant Town. Slum clearance and urban redevelopment are no longer isolated or purely private undertakings. They are now an integral part of our national and state housing policy and plans for the rebuilding of much of our urban areas. Thus, the Federal Government, 25 states, and the Territory of Puerto Rico have already enacted legislation to aid the financing and development of low-rent housing projects and to establish redevelopment authorities and private redevelopment corporations utilizing governmental powers to help build such housing. See Housing Act of July 15, 1949 (Pub. L. 171, 81st Cong.) and the acts cited in ftnt. 6, pp. 23-24, Petition for Writ of Certiorari in this case. The rebuilding of the blighted centers and other slum

areas in many of our cities under such statutes will greatly increase during the next decade.

Many of the most blighted urban areas throughout the country are occupied predominantly by Negroes. This is largely attributable to the comparatively lower income of Negroes and the cumulative effect of the enforcement of racial restrictive covenants prior to this Court's decision that such covenants are not judicially enforceable. *Shelley* v. *Kraemer*, 334 U. S. 1 (1948); *Hurd* v. *Hodge*, 334 U. S. 24 (1948). The baneful effects which slum housing and residential racial segregation have upon the economic, social and moral life and health, not only of Negroes, but also of the entire community, were comprehensively briefed for this Court in the Restrictive Covenant Cases. See *Consolidated Brief for Petitioners* in *Hurd* v. *Hodge*, *supra* (Nos. 290 and 291, Oct. Term, 1947), pp. 40-98 and Charts 1-13; *Brief for Petitioners* in *McGhee* v. *Sipes* (No. 87, Oct. Term, 1947), pp. 50-83. If the practice of racial exclusion at Stuyvesant Town is upheld, much of the benefit of the State and Federal programs for urban redevelopment will, solely because of race, be denied to a substantial number of the citizens for whose benefit those programs of urban redevelopment were intended.

Moreover, discriminatory rental practices such as those adopted by the respondents in Stuyvesant Town result in substantially obstructing the progress of urban redevelopment. Rehabilitation of slum areas requires destruction of the existing properties and the rehousing of the dispossessed inhabitants. The Stuyvesant Town pattern of racial discrimination means that Negroes and other minority groups, although they participate in bearing the tax costs of the project, will be evicted from their homes and pushed into other congested and blighted ghetto slums already occupied by persons of their race or into the cast off houses vacated by white citizens who are allowed to participate

in the fruits of urban redevelopment. Hence, minority groups, particularly Negroes, have manifested widespread opposition to slum clearance under urban redevelopment. Vivid examples of such opposition are (a) the determined resistance by many Negroes in the District of Columbia against the redevelopment of the Marshall Heights slum largely because of their fear that the redevelopment plans proposed by the National Capital Park and Planning Commission will force Negroes into isolated ghettoes, and (b) the resistance by Negroes in Chicago against the land assembly program of the Chicago Land Clearance Commission for the proposed housing redevelopment on Chicago's south side by the New York Life Insurance Company. The invalidation of Stuyvesant Town's discriminatory practice will thus aid the progress of slum clearance by securing the cooperation of numerous people who now vigorously oppose such urban redevelopment.

Respectfully submitted,

AMERICAN VETERANS COMMITTEE, INC. (AVC),
Amicus Curiae,

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RICHARD A. SOLOMON,
Attorneys for American Veterans Committee,
Amicus Curiae.

November 16, 1949,
Washington, D. C.

MOTION FILED NOV 17 1949

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 402

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,

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vs.

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION AND CONSOLIDATED BRIEF FOR AMICI CURIAE

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Commission on Christian Social Relations of the Episcopal Diocese of New York,

New York State CIO Council,

United Neighborhood Houses of New York, Inc.,

Social Action Committee of the Community Church of New York.

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IN THE

Supreme Court of the United States

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No. 402

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,
Petitioners,

vs.

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION OF THE BOARD OF HOME MISSIONS OF THE CONGREGATIONAL AND CHRISTIAN CHURCHES AND OTHERS FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for the undersigned religious, civic and welfare organizations, and on their behalf, respectfully moves this Court for leave to file the accompanying brief as amici curiae.

These organizations are religious, civic and welfare groups affirmatively concerned with the furthering of the democratic ideal in American life and they seek leave of the Court to file a brief in the above-entitled case in order

to express to the Court those principles of democracy which must guide the Court in its determination of the issue before it.

The Congregational Christian Churches of the United States, with approximately 1,100,000 members, and some 5,800 local churches, are on record through their representative national body known as the General Council as being opposed to racial segregation when in June of 1946 they adopted the following resolution:

> "We repent of the sin of racial segregation as practiced both within and outside our churches, and respond to the mandate of the Christian Gospel to promote with uncompromising word and purpose, the integration in our Christian churches and our democratic society of all persons of whatever race, color, or ancestry on the basis of equality and mutual respect in an inclusive fellowship.
>
> "We affirm as our own these words adopted by the Federal Council of Churches of Christ in America (meeting at Columbus, Ohio, March 5-7, 1946).
>
> "The Federal Council of Churches of Christ in America hereby renounces the pattern of segregation in race relations as unnecessary and undesirable and a violation of the Gospel of love and human brotherhood . . . As proof of their sincerity in this renunciation they will work for a non-segregated Church in a non-segregated society."

The Commission on Christian Social Relations of the Episcopal Diocese of New York, on November 9, 1948, at its regular meeting, voted unanimously to join with other organizations in filing a brief amici curiae in the above-entitled case to urge the Court to require the STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE

COMPANY to cease their policy of excluding Negro applicants for tenancy.

The New York State CIO Council, the central body of CIO unions in New York State, represents in excess of one million organized workers in various industries and occupations within the State, the membership of which includes Negroes and other minority groups, all of whom together compose the vast bulk of the people within this State and Nation. The interest of the workers represented by these organizations in this suit is predicated upon their direct stake in the abolition of all forms of discrimination, religious, racial and political.

The Society for Ethical Culture in The City of New York, founded in 1876, is a non-sectarian, religious fellowship, based on faith in man, and as such, it is dedicated to the fulfillment of human personality regardless of race, creed or color, and the improvement of the quality of human relations between men.

United Neighborhood Houses is an association of settlement houses in New York City, which has as its purpose coordination of the efforts of the settlement houses to raise the living standards of the underprivileged in the city, regardless of race, creed, color or national origin.

The Social Action Committee of the Community Church of New York endeavors to promote true fellowship and brotherhood among men. Its efforts are directed toward an establishment of a righteous social order that knows not sect, class, nation or race.

Movants seek leave to file a brief amici curiae in order to present written argument on the moral and social im-

portance of the issue presented by the petition for certiorari, to wit:

Whether a tax exempt, urban redevelopment corporation which has received government aid for the purpose of eliminating slum areas and providing decent moderate rental housing may refuse to accept Negroes as tenants solely on the basis of race or color.

Counsel for the petitioners has consented to the filing of this brief. Counsel for the respondents have been requested to consent but have refused.

Dated, New York, November 14, 1949.

ANDREW D. WEINBERGER,
Attorney for Amici Curiae,

The Board of Home Missions of the Congregational and Christian Churches,

The Council for Social Action of the Congregational Christian Churches of the United States of America,

New York City Congregational Church Association,

Committee on Inter-Group Relations of the New York Society for Ethical Culture,

Commission on Christian Social Relations of the Episcopal Diocese of New York,

New York State CIO Council,

United Neighborhood Houses of New York, Inc.,

Social Action Committee of the Community Church of New York.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 402

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,
Petitioners,

vs.

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

CONSOLIDATED BRIEF FOR AMICI CURIAE

Statement

This brief is presented by the undersigned religious, civic and welfare organizations as amici curiae on a petition for certiorari to the Court of Appeals of the State of New York to review a judgment affirming the judgment of the New York State Supreme Court dismissing the complaint whereby petitioners sought to restrain the respondents from denying to Negroes the opportunity to be admitted as tenants to the urban redevelopment project known as Stuyvesant Town. The full statement of the facts set forth in the petition for certiorari and brief in support thereof is so complete that we do not repeat it here.

The Issue

The Court is asked to grant a writ of certiorari to review the question of whether a corporation created by the state for the express purpose of providing decent moderate rental housing in former slum areas, in behalf of which the city has exercised the power of eminent domain and to which the city has granted a tax exemption over a twenty-five year period, may, in the operation of such moderate rental housing, refuse to admit Negroes to tenancy solely on the basis of race and color.

ARGUMENT

POINT I

The right to lease and occupy a home is a civil right protected by the Fourteenth Amendment.

The Court has held that the liberty mentioned in the Fourteenth Amendment means "not only the right of the citizen to be free from the mere physical restraint of his person as by incarceration, but the term is deemed to embrace the right of the citizen . . . to live and work where he will." (*Allgeyer* v. *Louisiana,* 165 U. S. 579, 589.) The right to occupy a home was described by Mr. Justice Frankfurter as one of those "rights so basic to our society, that, after the Civil War, their protection against invasion by the states were safeguarded by the Constitution." (*Hurd* v. *Hodge,* 324 U. S. 24, Mr. Justice Frankfurter in concurring opinion.)

This civil right is as fundamental as freedom of speech, religion, press, and assembly. In fact, it is so well accepted that we usually take it for granted.

As the President's Committee on Civil Rights stated in its report, "To Secure These Rights":

> "Equality of opportunity to rent or buy a home should exist for every American" (p. 67).

The concept is not new or novel. In the congressional debates after the adoption of the Thirteenth Amendment, and preceding the enactment of the Civil Rights Act of 1866, it appears that Congress intended to protect this as well as other fundamental civil rights of the freedmen. Some doubts were expressed by the opponent of the Civil Rights Act as to its constitutionality, and particularly the right of Congress to confer citizenship upon the former slaves without an amendment,[1] but neither the proponents of the Civil Rights Act nor its opponents doubted that the citizens of the United States had an inherent right to occupy a home.[2]

After the enactment of the Fourteenth Amendment, Congress reenacted the Civil Rights Act with a few modifications, expressly stipulating therein:

> "Property rights of citizens.—All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. (R. S. Sec. 1978.)"[3]

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[1] Flack, Adoption of the Fourteenth Amendment, Johns Hopkins Press, (1908) p. 21.

[2] See Debate between Senators Cowan and Trumbell, *Congressional Globe*, 39th Cong., 1st Session, Part I, pp. 499-500.

[3] Title 8, United States Code, 42.

During the debate on the Amendment and the Civil Rights Bill, one of the senators cited as an example of the oppression from which the freedmen must be protected the fact that in 1866, in Georgia, "If a black man sleeps in a house overnight, it is only by leave of a white man" and another asked, "Is a free man to be deprived of the right of . . . having a family, a wife, children, home?".

In 1879, the Court construed the Fourteenth Amendment as containing a positive immunity for the newly freed slaves against "legal discriminations . . . lessening the security of their enjoyment of the rights which others enjoy." (*Strauder* v. *West Virginia,* 100 U. S. 303, 308.)

The civil right of a Negro in New York State to occupy a home of his own choosing is protected against invasion by the State under the Fourteenth Amendment. This was recently reaffirmed in the decision of the Court in *Shelley* v. *Kraemer,* 334 U. S. 1, where court enforcement of a private race restrictive covenant was held to be prohibited state action, and unconstitutional.

The Court there stated:

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own, and dispose of property . . . It is likewise clear that restrictions on the right of occupancy of the sort sought to be created by the private agreements in these cases should not be squared with the requirements of the Fourteenth Amendment if imposed by state statute or legal ordinance."

The petitioners' brief presents all those aspects of state action, under the New York State Urban Redevelopment Law, which made possible the building of Stuyvesant Town, including the use of the power of condemnation by the City, the granting of a twenty-five year tax exemption of approximately $50,000,000 and the conveyance by the City to the respondents, without payment, of over seven acres formerly used as streets, and the continuing control by the City of the rentals to be charged, and the profits of the corporation. Such state participation in the creation of the housing project clearly clothed the operation of that project with the requirement of equality under the Fourteenth Amendment. (*Shelley* v. *Kraemer, supra; Buchanan* v. *Warley,* 245 U. S. 60; *Marsh* v. *Alabama,* 326 U. S. 501.)

The Thirteenth Amendment to the Constitution was adopted to abolish slavery; the Fourteenth and Fifteenth Amendments to abolish the badges of servitude which had remained in the treatment of the recently freed slaves. In 1872 the Court found that the one pervading purpose of the Amendments was ". . . the protection of the newly made freedmen and citizen from the oppressions of those who had formerly exercised unlimited dominion over him."[4]

That the determination of the rights of individual citizens in relation to facilities furnished by the state or with state aid is still made upon the basis of the race of the citizen, demonstrates how far we are today from the purposes of the Civil War Amendments.

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[4] Slaughter-House Cases, 16 Wall. 36, 71.

In granting the petition for ceritorari herein, the Court will once more be able to clarify the application of the Fourteenth Amendment to the rights of Negroes to housing, one of the basic necessities of life.

POINT II

Racial residential segregation is repugnant to the public policy of the United States.

Public policy as a concept of law has been succinctly defined as ". . . The principle of law that no one can lawfully do that which has a tendency to be injurious to the public or against the public good."[1] It is a concept which can be applied to a particular subject as a rule, apart and of itself, capable of forming the independent basis of a decision.

We have taken the liberty of quoting at length a portion of a scholarly opinion rendered in the State of Ohio on this subject. The excerpt, as it appears here, has been adopted for their own by the courts of at least three other jurisdictions.

In *Pittsburgh, C., C. & St. L. Railway Co.* v. *Kinney*, 95 Ohio St. 64, 67, 115 N. E. 505, L. C. A. 1917 D 641, 643 (1916) Justice Wanamaker beginning at page 67, wrote:

> "What is the definition of 'public policy'? A correct definition, at once concise and comprehensive, of the words 'public policy' has not yet been formulated by our courts. Indeed the term is as difficult to define with accuracy as the word 'fraud' or the

[1] *Cahill* v. *Gilman*, 84 Misc. 372 (New York).

term 'public welfare'. In substance it may be said to be the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare and the like. It is that general and well-settled public opinion relating to man's plain, palpable duty to his fellow men, having due regard to all the circumstances of each particular relation and situation.

"Sometimes such public policy is declared by constitution, sometimes by statute, sometimes by judicial decision. More often, however, it abides only in the customs and conventions of the people—in their clear consciousness and conviction of what is naturally and inherently just and right between man and man.

"It regards the primary principles of equity and justice and is sometimes expressed under the title of social and industrial justice, as it is conceived by our body politic.

"When a course of conduct is cruel or shocking to the average man's conception of justice, such course must be held to be obviously contrary to public policy, though such policy has never been written in the bond, whether it be constitution, statute or decree of court.

"It has frequently been said that such public policy is a composite of constitutional provisions, statutes and judicial decisions and some courts have gone so far as to hold that it is limited to these. The obvious fallacy of such a conclusion is quite apparent from the most superficial examination.

"When a contract is contrary to some provisions of the constitution, we say it is prohibited by the constitution, not by public policy. When a contract

> is contrary to statute, we say it is prohibited by a statute, not by public policy. When a contract is contrary to a settled line of judicial decisions, we say it is prohibited by the law of the land, but we do not say it is contrary to public policy. Public policy is the cornerstone—the foundation—of all constitutions, statutes and judicial decisions; and its latitude and longitude, its height and its depth, greater than any or all of them. If this be not true, whence came the first judicial decision on matters of public policy? There was no precedent for it, else it would not have been the first." (Accord: Snyder v. Ridge Hill Memorial Park, 61 Ohio App. 271, 288, 22 N. E. 2d 559 (1938), Adopted: Skutt v. City of Grand Rapids, 275 Michigan 258, 264, 266 N. W. 346 (1936); Girard Trust Co. v. Schmitz, 129 N. J. Eq. 444, 20 A. 2d 21 (1941).

That public policy is an independent doctrine of law finds further support in the well reasoned opinion in *Georgia Fruit Growers Exchange* v. *Turnipseed,* 9 Ala. App. 123, 62 So. 542 (1913) wherein the Court said at page 128:

> "Public policy, however, is broader than the mere terms of the Constitution and statutes and embraces their general purpose and spirit. Constitutions are born of the people, and statutes made (including the positive rules of common law adopted) in pursuance thereof emanate, of course, from legislative sources, all designated for the public good; but, where they are silent in terms and do not of their own force vitiate contracts detrimental to the public interest or welfare, as may be outlined in, and as is to be determined alone from, a general view of such constitution and statutes, the courts have supplied in

> a way the deficiencies of positive law by originating the doctrine of 'public policy' and so applying it as to hold void and decline to enforce executory contracts which though not violating the terms, yet violate the general spirit and policy of the law as expressed in the Constitution and statutes."

The concept was the basis of a decision in *Beasley* v. *Texas & Pacific Railway Co.*, 191 U. S. 492, where racial segregation was involved in the question of whether a railroad station should be built in a certain locale. In that case, the Court, in an opinion by Mr. Justice Holmes refused to enforce a contract on grounds of "public policy".

The principle of public policy is greater than the Constitution or any specific statute or decision on a particular aspect of a given subject, for it represents the aggregate, of which each statute or individual rule is but a component part.

We pride ourselves that our form of government and our political philosophy is the foremost exponent of a democratic society. The language in Section 125 of the New York Executive Law (1945) well describes the public policy of a democratic society.

> ". . . the legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color or national origin are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundations of a free democratic state."

This is forthright language without reservation or qualification. It is an exceptionally decisive overall con-

demnation of discrimination on the basis of race, creed, or color.

In determining the public policy of the United States on a subject as fundamental as housing and more particularly on racial discrimination in housing, not only the Constitution, the Thirteenth and Fourteenth Amendments and the Civil Rights Acts must be referred to, but in addition, the intent behind the enactment of these laws, the court decisions, and all pronouncements of the government on the subject must be considered.

In *Hirabayashi* v. *United States,* 320 U. S. 81, 100, the Court condemned racial discrimination stating:

> "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." (Citing *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Yu Cong Eng* v. *Trinidad,* 271 U. S. 500; *Hill* v. *Texas,* 316 U. S. 400.)

In the restrictive covenant cases,[2] the Solicitor General of the United States presented a brief to this Court setting forth the executive declarations, treaties and other official statements which expressed the public policy of the United States on racial discrimination. Among those cited were the Civil Rights Acts,[3] executive orders of the late President Franklin D. Roosevelt, and the Charter of the United Nations (59 Stat. 1033) approved as a treaty, citing in par-

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[2] *Shelley* v. *Kraemer,* 334 U. S. 1; *McGhee* v. *Sipes,* 334 U. S. 1; *Hurd* v. *Hodge,* 334 U. S. 24 (1948).

[3] R. S. 1977 and 1978, 8 U. S. C. 41 and 42 and R. S. 1078, 28 U. S. C. 292; R. S. 2302, 43 U. S. C. 184; R. S. 2004, 8 U. S. C. 31.

ticular Article 55 of the Charter, wherein the United Nations agreed to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (59 Stat. 1045-6).

All of these declared the public policy of the United States to be opposed to racial discrimination in housing.

In *Hurd* v. *Hodge, supra,* the Court emphasized the importance of considering the public policy of the United States in dealing with racial discrimination. Among the reasons the Court gave for invalidating enforcement of racial restrictive covenants was that it was against public policy. The Court cited Section 1978 of the Revised Statutes, derived from Section 1 of the Civil Rights Act of 1866, providing:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."[4]

The Court held further that the public policy of the United States is manifested in the Constitution, treaties, Federal statutes, and applicable legal precedents (citing *Muschany* v. *United States,* 324 U. S. 49, 66).

The action of the respondents in preventing Negroes from occupancy in Stuyvesant Town, an urban redevelopment housing project, solely on the basis of color and race, denies to Negroes a fundamental civil right and is opposed to the public policy of the United States.

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[4] 8 U. S. C. Sec. 42.

POINT III

The destruction of human and economic values which results from racial residential segregation makes this form of discrimination particularly repugnant.

A. Residential segregation has created a pattern of unprecedented overcrowding and congestion in the housing of Negroes in New York and an appalling deterioration of their dwelling conditions. The extension and aggravation of slum conditions have in turn resulted in a serious rise in disease, crime, vice and racial tension.

On the erroneous assumption that there is a detriment to real property values when there is renting to Negroes and through the inertia of continuing the established social pattern of residential segregation, Negroes have been barred from most residential areas, thus limiting, far more than one might realize, the space and housing facilities in which these Americans may live.

The extent of the overcrowding created by residential segregation can be properly evaluated only if it is viewed against the background of rapid urbanization of the Negro population—a process which began to gather momentum with the "Great Migration" of World War I. In New York City, for example, the interval between 1910 and 1930 saw 235,997 Negroes pour into a city which previously had less than 91,709—an increase of more than 300 per cent in twenty years.[1] This accelerated trend has continued ever since. In the following decade, between 1930 and 1940, while the total population increase in New York was only 7.6 per cent, a parallel increase in the Negro popula-

[1] Kahen, Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem, 12 U. of Chicago L. Rev. 202.

tion was 38.9 per cent.[2] This pattern is by no means peculiar to New York City, but is typical of a large urban area of the State of New York and of the entire North.[3]

As the Negro migration into New York City and the other cities of the state continued, limited areas of living became more and more overcrowded.

The supply of shelter diminished as the colored population grew. The Real Estate Reporter and Building News of October, 1945 reported that:

> "In West Harlem (according to the Mayor's Committee on City Planning), a section making up one-sixteenth of the total of Manhattan's area, more than one-tenth of the Borough's total population is housed. On one Harlem city block there is a population of 3,871—reported the highest dwelling-density in the entire world.'"[4]

While individuals in most migrant groups found escape from the slum and blighted areas as they improved their economic and cultural status,[5] the degree of concentration of Negroes has increased with the passing of time.[6]

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[2] U. S. Bureau of Census, Censuses of 1930 and 1940.

[3] Bureau of Census, Negroes in the United States, 1920-1932, 1935, Table 10, Page 55.

[4] The Urban Negro: Focus of the Housing Crisis, Real Estate Reporter and Building News, October, 1945, p. 12.

[5] The President's Conference on Home Building and House Ownership, Report of Committee on Negro Housing, Negro Housing, 1932, p. 5; Burgess, Residential Segregation in American Cities, Annals of the American Academy of Social and Political Science, November, 1928, pp. 108-12; Cressey, The Succession of Cultural Groups in the City of Chicago, University of Chicago, 1930 (A Ph. D. thesis in the Development of Sociology, pp. 58-9; 84-94, tables VI, VIII and X).

[6] Cressey, op. cit., p. 94, table XI.

Spatial separation of ethnic groups, which was temporary for European immigrants and native white migrants, became permanent for colored Americans. For the latter group this separation was no longer occasioned by economic forces alone. Residential segregation is not a voluntary matter for Negroes; it is enforced. A new and distinctly American ghetto has developed.

In this situation, only two things can possibly happen. Either Harlem in New York City and the smaller colored residential islands in the city could attempt to absorb more inhabitants or the areas available to Negroes could expand. The prevailing mores of residential segration has prevented the possibilities of expansion and free movement of Negro families, regardless of their income or cultural level, thereby intensifying the overcrowding of already densely populated Negro ghettos. This has resulted in an alarming decline in the living standards of a large segment of our population.

1. *Overcrowding*

The accepted standard by which the housing experts measure overcrowding in dwellings is the relationship between the number of persons and the number of rooms, and a dwelling is regarded as overcrowded when there are fewer rooms than there are persons to live in them.[7]

Measured by this definition a preponderence of all housing occupied by Negroes in New York City is overcrowded.

The immediate effect of enforced racial segregation is abundantly clear from the statistical evidence. Because

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[7] Wood, Introduction to Housing, U. S. H. A. Washington, 1939, p. 36.

Negroes have been unable to exercise their civil right to move freely to new living quarters, the black ghettos have become increasingly and dangerously overcrowded.

2. *Conditions of Dwellings*

It is a corollary of overcrowded housing that the conditions of living inevitably fall far below the standards of safety and health which every citizen has reason to expect. The continuous process by which thousands of new Negro migrants arrive annually in the *Harlems* of the cities of New York State results in a perpetual deterioration in the living conditions of these people. The impact upon the Negro has been disproportionately severe. He pays higher rentals for inferior dwellings[8]—inferior to the point of endangering the lives and well-being of himself and his children. Because of the discrimination practiced in housing only a small portion of the total housing supply is open to the Negro and the opportunity of improving his status with respect to the barest necessities of living, is cut off in deference to private prejudices and a reluctance on the part of a decreasingly small group of people to change the pattern of segregation.

Viewing the condition of dwellings upon a nation-wide basis, it will be seen from the 1940 Census that 83% of the dwellings occupied by Negroes were in need of major repairs or contained plumbing deficiencies. The comparable figure for white dwellings was 45%. Twenty-six per cent of the dwellings occupied by non-whites which needed major repairs were without running water (9.2 was

[8] Robinson, Relation Between Condition of Dwellings and Rentals, by Race, Journal of Land and Public Utility Economics, August, 1946, pp. 299-302.

the ratio in white dwellings). In those non-white dwellings which did not require major repairs, 35.5 per cent were without running water as compared to 17.4 per cent of the white dwellings. While 59% of all dwelling units occupied by whites had private baths and toilets, these necessities were found in only 20.5 per cent of non-white dwellings.

A recent study of sixteen northern and western cities revealed that while only 16.5 per cent of the white units were substandard (i. e., needing major repairs or with plumbing deficiencies), 44.9 per cent of the non-white units were deemed to be substandard.[9]

3. *The Results of Slum Conditions in Negro Housing*

The needs of Negroes have not been met by new housing since access to a large proportion of this housing is denied to them. The supply of available shelter has never caught up with the demand. The poorly housed have become more poorly housed. The *Harlem* in every city has become a slum—the ultimate in the degeneration of the American dwelling place.

The results of these conditions in terms of public welfare and community life are amply documented by public record. This Court may take notice of the higher incidence of disease, crime, vice, and violence in unhealthy and deplorable living areas. It is here proposed to set out in summary form some of the observations and conclusions of experts in these special social fields with particular reference to the conditions existing in the Negro ghetto.

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[9] Robinson, Relation Between Condition of Dwellings and Rentals by Race, The Journal of Land and Public Utility Economics, Volume XXII, No. 3, October, 1946, p. 297.

The chain of causation is apparent. These are the effects of racial residential segregation.

4. *The Effect of Residential Segregation on Health*

It has been demonstrated above that residential segregation inevitably forces the segregated group into blighted and overcrowded areas. These conditions in themselves create a serious health hazard regardless of the economic status of the segregated group. Authorities in the field of public health and public housing are agreed that bad housing has a direct and disastrous result upon health.[10]

Frequent contact of large numbers of individuals in a restricted area cause significant increases in respiratory diseases. This is demonstrated by the high mortality rates resulting from tuberculosis, pneumonia, influenza and the common communicable diseases of childhood in overcrowded areas.[11]

Typhoid fever is 100% more frequent in slums; indigestion and stomach ailments 75% more frequent; enteritis and colitis 40% higher. These relationships hold even if the economic factors are taken into account.[12] As shown in a study made by the respondent Metropolitan these conditions also resulted in a high incidence of rheumatic

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[10] Smillie, Preventive Medicine and Public Health, The MacMillan Company, New York (1946); Basic Principles of Healthful Housing, Committee on Hygiene of Housing of the American Public Health Association; Winslow, Housing for Health, The Milbank Foundation (1941).

[11] Britton, New Light on the Relation of Housing to Health, 32 American Journal of Public Health 193 (1942).

[12] Britton and Altman, Illness and Accidents Among Persons Living Under Different Housing Conditions, 56 Public Health Reports 609 (1941).

fever, the most common cause of heart disease among individuals under 45.[13]

The infant mortality rate is the most senstitive single index of health and progress. If such an index of social conscience and progress is applied to the Negro people, it is seen that they are excluded from the benefits of the American way of life.

> "City-born babies, and those born in the towns, have a slight edge on babies born in the country, in their chance for survival. That comparison holds true *only for white children* however; in the non-white group, which is mostly Negro, those born in the rural areas have a better chance than those in urban areas, though still not anywhere near as good a chance as the white child in either city or country. The reason may be that the conditions under which Negroes must live in the cities and towns represent a hazard for babies that outweigh other factors, such as more and better medical care and access to hospitals, that tend to give the city born child the advantage."[14]

This answer is given grim reality by the tragic pattern of Negro infant mortality rates which are 65% higher than for white babies in all areas of the United States.[15] In New York City with the most progressive health department in the country, the Negro mortality rate is 50% higher than that for the white race.[16]

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[13] Paul, The Epidemeology of Rheumatic Fever and Some of Its Public Health Aspects, Metropolitan Life Insurance Co., 1943.

[14] Federal Security Agency, U. S. Children's Bureau, Our Nation's Children, No. 8, August, 1947.

[15] Gover, Negro Mortality; The Birth Rate and Infant and Maternal Mortalities, 61 Public Health Reports 43 (1946).

[16] Vital Statistics, New York City Health Department, 1946.

Despite the increased use of hospitals for child birth throughout the cities of the United States, two to three times as many Negro mothers die in child birth as white mothers.[17]

In terms of citizenship, the psychological evils flowing from segregated housing are equally as important to society as the physical health hazards discussed above. Draft rejection rates in the Second World War for personality disorders increased significantly in slum and overcrowded areas.[18] Furthermore, Negro draftees had the highest rates for both psychoneurosis and psychopathy among national and ethnic groups, a factor explained in the studies as related to "the intensity and severity of stress to which many of the Negroes are subjected."[19]

> "The most all-pervading sense of frustration that literally engulfs the Negro people in their caste relationship to the majority group and the mechanisms of segregation and discrimination that are its attendant counterparts. . . . Caste is meant to refer to systems of privilege and the limiting of spontaneous participation in the culture of which the Negro people are a part.
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> "The typical American town has its black ghetto—almost always situated on the other side of the track. It is difficult to stay there and more difficult

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[17] Gover, op. cit.

[18] A study of Washington, D.C., draft rejection rates is found in Hadley, et al. Medical Psychiatry; an Ecological Note, VII Psychiatry 379 (1944) and a study of Boston and surrounding areas is found in Hyde & Kingley, Studies in Medical Sociology: The Relation of Mental Disorders to Population Density, 77 N. E. Journal of Medicine 571 (1944).

[19] Hyde & Chisholm, Relation of Mental Disorders to Race and Nationality, 77 N. E. Journal of Medicine 612 (1944).

> to leave. Overcrowding and congestion become commonplace. Individual privacy and respect for it disappears."[20]

In a study of mental disorders in urban areas it was demonstrated that social communication between population groups was essential to healthy mental development, and that social isolation of a given group led to increased mental breakdown among its members.[21]

> "Bad housing, with its resultant overcrowding, filth, lack of personal and family privacy, its noises, its odors and its dark and dirty corners, breaks down family morale and has a profound and evil influence upon the happiness, welfare and health of the people."[22]

In human terms, substandard housing means serious interference with the emotional, mental and family life of the individual:

> "The Committee on the Hygiene of Housing has correctly pointed out that more damage is done to the health of the children of the United States by a sense of chronic inferiority due to the consciousness of living in substandard dwellings than by all the defective plumbing which those dwellings may contain."[23]

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[20] Cooper, The Frustration of Being a Member of a Minority Group, 29 Mental Hygiene 189 (1945).

[21] Farris & Dunham, Mental Disorders in Urban Areas: An Ecological Study of Schizophrenia and Other Psychoses, University of Chicago Press, 1939.

[22] Smillie, op. cit.

[23] Winslow, Housing for Health, The Milbank Foundation, (1941).

B. There are no economic justifications for residential segregation of Negroes. Real property is not destroyed or depreciated by reason of Negro occupancy and large segments of the Negro population can afford to live in areas from which they are barred.

1. *The effect of Negro occupancy upon real property.*

This is the conclusion of one analyst:

> "Already there is a body of evidence which indicates that Negroes with steady incomes who are given the opportunity to live in new and decent homes . . . instead of displaying any 'natural' characteristics to destroy better property have, if anything, reacted better towards these new environments than any other groups of similar income. Colored tenants have also displayed desirable rent-paying habits when housed in structures designed to meet their rent-paying ability. For 155 projects in 59 cities having two or more FPHA-aided projects, at least one of which is occupied by Negro tenants, the following results are reported: Collection losses do not exceed one per cent of the total operating incomes for a total of 142 of these projects, 72 of which are occupied by Negroes and 70 by white or other tenants. Five of the 13 projects showing rental losses in excess of one per cent are tenanted by Negroes and 8 are tenanted by whites or others. The collection loss records between the two racial groups do not differ more than one per cent in 51 of the 59 cities, and the records are identical in 34."[24]

The National Association of Real Estate Boards recently undertook a survey of Negro housing and found that

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[24] Weaver, Race Restrictive Housing Covenants, The Journal of Land and Public Utility Economics, Vol. XX, No. 3, August, 1944, p. 189.

"provision for good housing for Negroes can be carried out as a sound business operation and that the Negro family that rents good housing is usually a good economic risk."[25] Three-fourths of the local Boards which participated in the latter survey found no reason why large insurance companies should not freely purchase mortgages upon housing occupied by Negroes.[26]

This same survey asked if Negroes were good economic risks and if Negroes did depreciate property. The answers can be summarized as follows:

(1) Does the Negro make a good home buyer and carry through his purchase to completion? . . . 17 of 18 cities reported YES

(2) Does he take as good care of property as other tenants of comparable status? . . . 11 of the 18 cities reported YES

(3) Do you know of any reason why insurance companies should not purchase mortgages on property occupied by Negroes? . . . 14 of the 18 cities reported NO.

(4) Do you think there is a good opportunity for realtors in the Negro housing field in your city? . . . 12 of the 18 cities reported YES.[27]

In Washington, D. C., a small number of colored families moved about 50 years ago into Brookland, a desirable suburban section of the City. Most of them were Gov-

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[25] Press Release No. 78, National Association of Real Estate Boards, November 15, 1944.

[26] Ibid.

[27] Ibid.

ernment employees and had stable incomes. Just prior to the recent war, many new homes were built in the area by Negroes at a cost of from $7,500 to $25,000. These houses are better designed and constructed than most of the existing dwellings in the neighborhood and their occupants are of a higher educational and cultural level than the majority of their white neighbors. The property values in Brookland have increased not only in the Negro community, but also in the contiguous white areas.[28]

Another such model community can be found in middle-class Westchester County, New York.[29] New York City also contains persuasive evidence that the color of the skin of the tenants is not the determining factor in the rise of standard of dwelling conditions:

> "Closest approach to satisfactory housing for Negroes in New York's five boroughs, according to William L. Carson, a realtor with long experience in the area, is the Williamsbridge section in the Bronx. Most wage earners, here, have incomes of $3,000-$4,000 per annum, most are Civil Service employees, many own their own homes, although some are rental tenants. Although seriously affected by the housing shortage, the Williamsbridge community has uniformly higher standards of dwelling conditions than are to be found in overall surveys of the other colored centers. The result is a total absence of hoodlumism, buildings kept in good condition, no evidence of slums (present or future) and a general

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[28] Weaver, Race Restrictive Housing Covenants, The Journal of Land and Public Utility Economics, Vol. XX, No. 3, Aug., 1944, p. 191.

[29] Mummy and Phillips, Negroes as Neighbors, Common Sense, April, 1944, p. 134.

> standard of living not much below that of average white families of comparable income."[30]

A similar comparison was made recently in Philadelphia where a section recently entered by colored people was selected for study and the selling prices before and after Negro occupancy were computed in a single block. The conclusion, as reported in an article entitled, "Colored Occupancy Raises Values", was as follows:

> "The average sales price for the standard property in average condition, before colored occupancy was between $2,800 and $3,200. Today (September 1945) about six months after the first colored occupancy purchases, the average value for the same property is $4,500 to $5,000, with exceptional houses selling up to $5,500 and $6,000.[31]
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> "If we trace the development of the newer colored neighborhoods, we will find that as a new section opens up close to the suburban section, the better-educated and higher-income group colored move there from a less desirable section . . . Thus, there is a gradual stepping up and development of the newer colored sections. This has all led to the increase in value in these sections and has stabilized all of these neighborhoods. As the process of colored expansion proceeds, the stepping-up process will continue to increase values in these newly developed colored sections."[32]

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[30] The Urban Negro: Focus of the Housing Crisis, Real Estate Reporter, November, 1945, p. 11.

[31] Beehler, Color Occupancy Raises Values, The Review of the Society of Residential Appraisers, Sept., 1945, p. 4.

[32] Ibid., p. 6.

The origin of the fallacy that the presence of Negroes creates a decline in property values has its historical roots in the fact that Negroes are traditionally relegated to already deteriorated neighborhoods or live under such conditions of overcrowding (due to restrictions) as to occasion physical decay of property. Most of Harlem was built around 1900 and an appreciable part of it in the last century.

The Philadelphia Chapter of the Society of Residential Appraisers and the Wharton School of Finance conducted a joint survey in 1939 and found *no* houses occupied by Negroes in Philadelphia could be classified as being in a good residential neighborhood:

> "By the time colored occupancy spreads to any neighborhood it is at least 30 years old and has the characteristics of physical and functional obsolescence that remove it from the category of a good neighborhood."[33]

Although it is often assumed because a particular neighborhood once housed the rich, that it was a first-class residential community when it was taken over by colored people, the evidence reveals, however, that in most instances the area had already been deserted by its original inhabitants and had started on the road to deterioration long before Negroes entered.

One other objective factor in value depreciation has been noted by economists. Our building industry has generally deemed it expedient to concentrate on the upper-income group. Since there are not as many families in

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[33] Stern, Long Range Effect Colored Occupancy, The Review of the Society of Residential Appraisers, January 1945, p. 5.

this group as in the middle and lower-income groups, "the oversupply of houses (in terms of capacity to pay, not in terms of need), must be absorbed by families whose income is lower than the income of families for whom houses were designed. This means a sizeable depreciation in value must take place."[34]

Available and valid data are cumulative confirmation of the proposition that when economic factors are kept constant, there are no noticeable differences in the quality of property maintenance, conditions of occupancy, and neighborhood standards on property values which can be directly traced to race.[35]

2. *The ability of Negroes to pay for better housing.*

It is also frequently asserted in support of racial segregation that few, if any, Negroes can afford to pay for decent housing. It is argued that the Negro who can afford to move out of Harlem is so exceptional that a change in existing procedures is not indicated.

This contention also fails to meet the test of analysis. In the first place, it should be noted that Negroes pay

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[34] Newcomb and Kyle, The Housing Crisis in a Free Economy, Law and Contemporary Problems, Winter, 1947, p. 191. With respect to Harlem in New York City, see Kiser, Sea Island to City, Columbia University Press (1932), pp. 19-21.

[35] This is supported by the experience of the public housing program, the few desirable areas occupied by Negroes in cities such as Washington, Philadelphia, and New York and in the small number of well designed medium-rental housing projects available to Negroes—such as the Paul Lawrence Dunbar Apartments in New York City and the Michigan Boulevard Garden Apartments in Chicago.

much higher rentals for the quarters which they currently occupy than do white persons in comparable units.[36]

Moreover, Negroes spend a larger proportion of their income for rent than white persons in the same income group. These facts are brought into sharp relief by the result of a study of housing in Chicago:

> "Negro residents of the Chicago 'black belt' pay as much per cubic foot per room as that paid by wealthy residents for equivalent space on Lakeside Drive."[37]

Whatever may have been the differential in earnings between Negroes and whites in the lower and middle income groups prior to World War II, the industrial effort in connection with the war tended to eradicate such differential. New and better paying jobs were open to Negroes, both men and women, and earnings in all job classifications were increased.[38] Consequently, great numbers of Negro workers and many Negro professional and business men and women who are dependent upon the Negro community, as well as those Negroes who recently have secured white collar and professional jobs in the larger economy are now able to pay for decent housing. Consequently the number of potential Negro tenants of decent housing is greater than formerly.

Graphic statistics are available to demonstrate that Negroes in New York City have a demand as well as the

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[36] Moron, Where Shall They Live? The American City, April, 1942.

[37] Cayton, Negro Housing in Chicago, Social Action, April 15, 1940, p. 18.

[38] Weaver, Negro Labor: A National Problem, pp. 78-93, 112-130.

ability to pay for more and better housing. Certainly, these statistics do not support the proposition that the inhabitants of Harlem are, of necessity, required to remain in substandard housing for lack of economic means.

> "When the Riverton project was opened in Harlem in July, 1947, there were 20,000 applicants (mostly Negro) for its 1,232 units. Rents averaged $14 a room, with a minimum of $44 a month for a one-bedroom unit."[39]

At the end of the war, income distribution among colored American citizens in the northern urban centers more clearly approximated that obtaining for the entire population than ever before. The number and proportion of Negroes well above the subsistence level had increased greatly. Racial residential segregation cannot be justified on the grounds of inability to pay:

> "The peculiar intensity of the housing problems of Negroes is not due to their disproportionately low incomes alone. The really distinctive factor underlying these problems stems from the fact that, among the basic consumer goods, only for housing are Negroes traditionally excluded from freely competing in the open market. Consequently, not only do the majority of Negroes live in low-rent substandard housing, but even when colored families can afford rents which normally assure decent shelter, they are often denied it."[40]

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[39] Weaver, The Negro Ghetto, Harcourt, Brace & Company (1948) p. 130.

[40] Weaver, Chicago: A City of Covenants, Crisis, March, 1946, p. 76.

There is no validity to the assumption that racial residential segregation can be justified in terms of the economics of residential real estate. Negro occupancy does not in itself destroy or depreciate the property. Large numbers of Negroes can afford to enter the free housing market. The only significant economic fact which the available data confirm is that traditionally Negroes have been forced to pay a larger portion of their income and a larger absolute price for smaller value and for substandard dwelling. Racial prejudice and the desire to profit by it are at the root of all segregation.

Thus, Negroes are able to pay for better housing in large numbers, but the wall of residential segregation that surrounds their areas of concentration and excludes them from most newly constructed housing prevent their securing it. This is no temporary phenomenon of a general housing shortage. It is an historic fact and will persist as long as the evil of residential segregation remains.

CONCLUSION

In addition to the firm legal basis upon which the petitioners' stand, there are compelling moral reasons which require that this Court should grant the petition for a writ of certiorari and reverse the judgment below.

We are living in an age in which democracy must grow and expand if it is to live. The action of Stuyvesant Town in accepting extraordinary governmental aids and converting them to the use solely of white residents of New York

City can only undermine those principles of democracy and equality of man upon which our government is founded.

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The Board of Home Missions of the Congregational and Christian Churches,

The Council for Social Action of the Congregational Christian Churches of the United States of America,

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Committee on Inter-Group Relations of the New York Society for Ethical Culture,

Commission on Christian Social Relations of the Episcopal Diocese of New York,

New York State CIO Council,

United Neighborhood Houses of New York, Inc.,

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MOTION FILED NOV 17 1949

IN THE

Supreme Court of the United States

October Term, 1949.

No. 402

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,
Petitioners,

vs.

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY.

Petition for a Writ of Certiorari to the Court of Appeals of the State of New York

Motion for Leave to File Brief as Amicus Curiae and Brief of Community Service Organization of Greater Los Angeles, Amicus Curiae.

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Petition for a Writ of Certiorari to the Court of Appeals of the State of New York

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May It Please the Court:

The undersigned, as counsel for the Community Service Organization of Greater Los Angeles, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiae.* The consent of the attorney for the petitioners to the filing of this brief has been obtained.

Special reasons in support of this motion are set out in the accompanying brief.

November 15, 1949.

LOREN MILLER,
Counsel for Community Service Organization of Greater Los Angeles,
Amicus Curiae.

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Petition for a Writ of Certiorari to the Court of Appeals of the State of New York

BRIEF OF COMMUNITY SERVICE ORGANIZATION OF GREATER LOS ANGELES, AMICUS CURIAE.

This case involves the question whether persons may be constitutionally excluded because of race from tenancy in housing built and operated pursuant to the New York State Redevelopment Companies Law.

Statement of Interest of Community Service Organization of Greater Los Angeles.

The Community Service Organization represents the interests of Spanish-speaking people and other minorities in greater Los Angeles. It is organized to improve the conditions under which they live and to secure their rights to equal opportunity in employment, housing, health services, at the ballot box, and before the law.

Since the great majority of these people are concentrated in blighted areas now under consideration by the City and County of Los Angeles for redevelopment, the Community Service Organization insists on their right to occupancy in redeveloped areas regardless of race, creed, color, national origin or ancestry. It is our opinion that this right, denied by the New York Court of Appeals in this case, is a fundamental right guaranteed by the Federal Constitution. Because of the serious implications the New York decision has for future living patterns in redeveloped areas on the West Coast, we have asked leave of this Honorable Court to file a brief *amicus curiae*.

A Comparison Between California and New York Redevelopment Law.

Principal characteristics which the California Community Redevelopment Act (Deering's General Laws, Act 1500) shares with the New York Redevelopment Companies Law may be summarized as follows:

(a) *Objective.* Both Acts aim at the clearance, rehabilitation and redevelopment of so-called blighted areas, characterized by sub-standard buildings, faulty planning and land utilization, or other factors which make such areas social and economic liabilities to the community. (Calif. Act, Sec. 2; N. Y. Act, Sec. 2.)

(b) *Eminent domain.* The power of condemnation is invoked to make possible the assembly of large parcels of blighted land for redevelopment. (Calif. Act, Secs. 74-75; N. Y. Act, Sec. 20.)

(c) *Financial aid and inducement.* Both Acts recognize that excessive land cost is a significant factor in the failure of private enterprise to undertake redevelopment

unaided. Each has a plan for reducing land cost to a reasonable use value, as follows: In California, the local government may take a loss to the extent of 50% of the cost of the site (and more than 50%, with voters' approval). (Sec. 45.7.) In New York, the local government may grant tax exemption on the value of the improvements for any period up to 25 years. (Sec. 26.)

(d) *Participation and control by local government.* Redevelopment plans must be specifically approved by the local legislative body (Calif. Act. Sec. 70; N. Y. Act, Sec. 15); public streets may be opened, closed, widened or otherwise modified, in coordination with the redevelopment project (Calif. Act. Sec. 65; N. Y. Act, Sec. 20); in the contract executed with the purchasers of the land, conditions governing its use may be imposed over which the public agency maintains supervisory control (Calif. Act, Sec. 29(h); N. Y. Act, Sec. 21).

The Acts differ in their mechanism for accomplishing such public control. In California, the local redevelopment agency, a public body (Secs. 18, 29), sells or leases the land in the project area for redevelopment pursuant to the approved plan, and may make any of the purchaser's obligations, including such conditions as are necessary in the opinion of the agency, covenants running with the land, whose breach shall cause the fee to revert to the agency. (Sec. 29(h).) In New York, the statute contemplates that prospective purchasers of land in project areas will organize themselves into corporations pursuant to the Act, consenting to regulation of their "rents, profits, dividends, and disposition of . . . property and franchises" (N. Y. Constitution, Art. XVIII, Sec. 2; N. Y. Act, Sec. 4), such regulation being effected by the supervising agency,

who may be the city comptroller or, if an insurance company is owner of the project, the State Superintendent of Insurance. (Sec. 3(10), 21.)

Minorities Have an Important Stake in the Redevelopment Program.

Minority populations have a large and immediate stake in redevelopment. It is estimated that out of a present total population of 4,100,000 persons in the County (including the City) of Los Angeles, there are in excess of 250,000 Negroes, 350,000 Mexican-Americans, and 45,000 Orientals.[1] These groups, for reasons into which we need not enter here,[2] tend to be concentrated in blighted or substandard areas. Thus, in two areas recently proposed by the Los Angeles Regional Planning Commission to the County Board of Supervisors as likely areas for redevelopment, one, in Maravilla, has a predominantly Mexican-American population; and the other, in Duarte, is about evenly divided in population between Negroes and Mexican-Americans; and other areas reported under study for redevelopment have a similar minority character.

Under California law, the local legislative body, before approving any redevelopment plan, must find that adequate permanent housing facilities are or will be made available

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[1]From Office of Racial Relations Adviser, Federal Housing Administration, Zone 4, Los Angeles.

[2]See brochure entitled "Housing of the Non-White Population," published by Housing and Home Finance Agency, Washington, D. C., June, 1948.

for the displaced residents. (Sec. 68.) There is no requirement in the Act that the housing be made available on the same site from which such families are displaced. The County and City of Los Angeles will have to determine whether such former residents and other applicants shall be eligible for housing accommodations in the area after redevelopment, regardless of their race, creed, color, national origin or ancestry.

Do Minorities Have a Constitutional Right to Occupancy in Redeveloped Areas Without Discrimination?

The decision of the New York Court of Appeals below, which by the narrow margin of 4 to 3 votes denied Negroes a right to tenancy in a New York redevelopment project and overruled the contention that Federal constitutional guarantees were violated, has left in its wake a genuine uncertainty whether in fact the constitutional issue was properly raised.

The City and County of Los Angeles are now embarking on a program of redevelopment, and require early guidance from the Supreme Court on this issue. While the New York statute differs from the California Community Redevelopment Act, nevertheless the resemblances are such that a decision as to rights which may or may not be created under the New York law would undoubtedly be helpful to Los Angeles. The time for learning the limits of constitutional rights and disabilities on this issue is *now*, before the County and City proceed with their redevelopment program and before the racial pattern of the new redeveloped areas becomes fixed.

Conclusion.

The Community Service Organization of Greater Los Angeles requests the Court to grant the Petition for a Writ of Certiorari in this case, and thus resolve now a question of immediate importance to local governments and to citizens everywhere.

Respectfully submitted,

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